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The Solicitors' Journal

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Current Topics.

Tenants and Christmas.

CHRISTMAS DAY is one of the usual quarter-days, but one on which under present-day conditions, even the most punctilious tenant would find it difficult to seek out his creditor and discharge his debt. It is a day on which the thought of rent is not likely to enter anyone's head. If there be a tenant who is inclined to let such matters worry him, we hope he is a layman; for this is a case in which that ignorance of the law which the law excuses not is indeed bliss. In the eyes of the law, the tenant is in a trilemma. If he pays before quarter-day, the landlord may accept the rent, but in the event of an assignment of the reversion, voluntary or involuntary, before the day, someone else will claim the same payment. Strict compliance, as we have already remarked, may be impracticable. And yet if the rent be not paid, a certificated bailiff may arrive at dawn on Boxing Day, and on gaining admittance demand not only the rent but the reasonable costs of the levy; he need not accept a cheque, and the tenant may find it difficult to cash one on a Bank Holiday; pending satisfaction of the demand, the broker may impound furniture, Christmas presents not in actual use, etc. (the children, if less ignorant than their father, might recover theirs by serving the bailiff with declarations in writing pursuant to the Law of Distress Amendment Act, 1908, s. 1; and the officer would probably refrain from seizing the cold turkey, as being by nature perishable). But if such an event were ever to happen, it would probably lead to the insertion of at least one new clause in all future leases.

No Appeal to a Court of Law.

THE Lawn Tennis Association is reported to have resolved that persons aggrieved by their official decisions shall not be permitted to appeal against them to a court of law. The question whether such a resolution is legal has been raised. Neither the Lawn Tennis nor any other association can, of course, restrain the freedom of His Majesty's subjects, and the exercise of a right to have an injury redressed by process of law is part of that freedom. The association, however, is also free to manifest its displeasure in any lawful way with those who break its rules, and it seeks to exercise discipline over lawn tennis players, in order to make them behave in accordance with the best traditions of the game. In a similar manner, the Jockey Club controls owners and trainers of race-horses, and the Football Association the clubs affiliated to it. The discipline may even extend to non-members, and may range through a caution or reprimand or suspension of recognition to expulsion in the case of a member, and complete boycott in the case of a non-member. Thus presumably the Lawn Tennis Association could order that, on pain of similar expulsion and boycott, no member, or member of any affiliated club, should play at any official tournament under its auspices with an excommunicated offender, who would thus be completely cut off from competitive honours. The legality of a boycott may raise difficult questions, but presumably, if there is no malice (thus excluding *Quinn* v. *Leathem* [1901] A.C. 495), the *Mogul Case* [1892] A.C. 25, and *Allen* v. *Flood* [1898] A.C. 1, indicate that such methods of discipline are lawful. These were trade cases, and one might suppose that a merely social boycott, which could not ruin an amateur, though it might spoil his enjoyment, would be an *à fortiori* one. The club expulsion cases such as *Dawkins* v. *Antrobus* (1881), 17 C.D. 615, appear to point in the same direction. The true remedy of a person aggrieved by the disciplinary action of a body of this nature would appear to be a libel action, for the allegation of a serious offence against the spirit of any game, such as cheating, would, if believed, inspire contempt of the offender in the minds of other players. Accusation of certain minor offences, such as habitual unpunctuality at tournaments, might not be libellous, but the usual discipline for the unpunctual is to award a "walk over" to his or her opponent. The players who are politely described as "temperamental" must certainly give the association and its affiliated clubs considerable trouble.

"Reasonable" Deviation.

THE WORD "reasonable" is a well-worn formula which has been applied in Acts of Parliament to price, time, place, men, and even sometimes to women. Its true function is to indicate that the law does not essay to frame a general rule, but leaves a class of questions to be determined by a jury or a judge sitting as a jury, "having regard to the facts of the individual case." Lord HERSCHELL said in *Hick* v. *Raymond and Reid* [1893] A.C. 29: "I would observe, in the first place, that there is, of course, no such thing as a reasonable time in the abstract. It must always depend upon circumstances." In *Stag Line, Limited* v. *Foscolo Mango and Co. Ltd. and Others* (75 SOL. J.

884) the House of Lords considered the question of what constituted a "reasonable" deviation within Article IV of the Schedule to the Carriage of Goods Act, 1924, so as to exempt the carrier from loss or damage resulting therefrom. The circumstances were that the "Ixia," the vessel in question, had been chartered to carry a cargo of coal from Swansea to Constantinople. The terms of the charter-party were incorporated in the bill of lading, and cl. 6 gave the vessel liberty "to call at any ports in any order for bunkering or other purposes or to make trial trips after notice." When the boat started, at 1.45 a.m. on 31st June, 1929, the firemen on board "were not in possession of their full energies . . . owing to excessive drinking before they joined the ship." The result was that a necessary test of the heating apparatus could not be made before the pilot was discharged. Instead of following the recognised route the ship was turned about 5 miles out of its course to enter St. Ives Harbour to land the engineers who had taken the test, and then hugging closely the dangerous coast of Cornwall ran on a rock called the Vyneck Rock. There was a total loss of the ship and the cargo, but, fortunately, no loss of life. The weather was cloudy, there was a moderate wind, and visibility was moderately good up to 6 miles at the time of the wreck. The respondents asked for damages for the loss of their cargo and Mr. Justice MacKinnon gave judgment in their favour for £8,000, holding that the appellants failed to discharge the onus of proving that the deviation was reasonable, and also that the liberty conferred by the contract of carriage to call at ports should be limited to calling for purposes *ejusdem generis* with bunkering. This decision was affirmed by the Court of Appeal. Lord Buckmaster, in delivering judgment and upholding the Court of Appeal and Mr. Justice MacKinnon, "did not think elaborate definitions, whether contained in dictionaries or judgments, were of much use in determining the value of a word in common use which meant no more in this context than a deviation which, every circumstance having been duly weighed, commended itself to the common sense and sound understanding of sensible men." His lordship held that the word "bunkering" must have some demonstrative and limiting effect and the phrase "or other purposes" following it could not be so construed as to disregard the effect of the first example and assume that any purpose was thereby permitted. The loss was directly traceable to an unreasonable deviation and therefore the appellants failed.

The Irish Sweep Decision.

Sometimes a judge, in deciding which of two innocent persons shall suffer loss for the fraud of a third, may regret that he has to find against either the plaintiff or defendant. From the judgment of Meredith, J., in the Irish Sweepstakes case, one may, perhaps, surmise that his only regret was that he could not decide against both. He had to give judgment in accordance with the law, however, and not the merits or demerits of the parties, and did so in favour of the defendant Scala, who, according to the judgment as reported, "not only induced the plaintiffs by misrepresentation to agree to the insertion of wrong numbers into the agreement, but betrayed them into committing a most regrettable fraud." Dealing with various legal points, he held that the sweep tickets were not to be regarded as offers to each holder to become a purchaser of the right to have the corresponding counterfoil included in the draw if he forwarded it to Dublin with the price asked for it, but that the ticket was in the nature of a proposal form, the proposal being accepted when the money was retained and the official receipt sent. Holders of tickets in future sweepstakes, therefore, will note that such cases as *Carlill* v. *Carbolic Smoke Ball* [1893] 1 Q.B. 256, are not applicable to their position. He held that the book of tickets containing the winning one was, as a mere chattel, the property of the partnership constituted by the agreement between the plaintiffs and the defendant, but the prize-money was in no sense an accretion to the value. This may be regarded as puzzling, because obviously the parties in making the agreement had the prize-money in view and nothing else. It is understood that there is likely to be an appeal, and, if so, more light may be thrown on the matter. Meredith, J., added: "It is hardly necessary to point out that it was presumably because the plaintiffs knew that the contract could not be enforced in England because of the illegal acts to be performed under it that this action was brought in the courts of the Irish Free State." By a journey to Ireland, it might have been possible to purchase the tickets without the violation of s. 41 of the Lottery Act, 1823 (the violation being the sale and not the purchase), but it is not suggested that this course was adopted. It has never been held that the purchaser of a foreign lottery ticket in England has committed an illegal act, and, on the principle of *Jeffery* v. *Bamford* [1921] 2 K.B. 351, in which McCardie, J., recognised a partnership of bookmakers in the profits derived from betting, the enforcement of a partnership agreement in an Irish sweepstake prize might, perhaps, be decreed. Meredith, J., observed: "It is obvious that if actions of this kind could be successfully maintained in this country, Dublin would rapidly become the gambler's cockpit of Europe." It is doubtful, however, whether his judgment will stop the prodigious flow of English money into Dublin by a single trickle.

Rate of Deduction of Income Tax by Trustees.

Recently a delayed legacy was paid to a legatee by the executors of a will, together with interest on it accruing since a date in October, 1930. The amount due for interest was agreed, but the executors claimed to retain tax at five shillings in the pound for the whole period, relying no doubt on s. 39 (1) of the Finance Act, 1927, which provides that tax may be deducted or shall be allowed at the standard rate for the year in which the amount payable becomes due. The legatee contended that, since the interest accrued *de die in diem*, the tax should be computed while the fiscal year 1930–1 was running at the rate of four shillings and sixpence in the pound, which would in no way contravene the provisions of the Act. The executors declining to yield, and the amount in dispute being too small to warrant legal proceedings, the legatee had to submit under protest, but the question he raised appears to concern all who now pay or receive interest accruing or which has accrued due before last April. As the above legatee points out, if he had demanded interest up to date, less tax at the beginning of April, the tax would without question have been computed at four shillings and sixpence, and no doubt he feels a grievance that he should be paid less because he has forborne to press for his money. In his contention, he appears to be supported by r. 19 (1) of the General Rules applicable to Scheds. A, B, C, D and E, which deals generally with deduction at the source, and provides that the person liable to make payment shall be entitled, on doing so, to deduct and retain thereout "a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the said payment was accruing due." The words "rate or rates" appear expressly to contemplate differential deductions. There is no doubt a distinction between the above case, and, for example, the payment of cumulative preference dividends in arrear after a prosperous year's trading by a limited company. In the latter case the money appropriated for the dividends in arrear would have been earned by the company in the current year and would be taxable accordingly. Whether, however, the tax deducted should, as between preference and ordinary shareholders, be at the current rate, or at the rate appropriate to the deferred dividend if paid punctually, might raise a question on the articles and be difficult to answer.

Dumping and "Most-Favoured-Nation" Treatment.

MR. RUNCIMAN'S declaration in the House of Commons that the Abnormal Importations (Customs Duties) Act, which became law on 20th November, 1931, does not infringe any of the commercial treaties between England and other countries, of the provisions of which a timely collection has now been issued by the Foreign Office, will remove one anxiety to which the Government's anti-dumping legislation gave rise.

The right of every independent State, unless fettered by treaty engagements, to pursue its own fiscal policy is clear, alike on principle and on authority (Liszt, "Völkerrecht," p. 319). The earliest commercial treaties, which had, as their object, the protection of the merchants of the contracting parties against brigandage and piracy (Calvo, "Droit International," 1, 622), call for only passing mention. The modern history of the subject begins with the eighteenth century and divides itself into three periods. In the first, which extended to the publication of ADAM SMITH'S "Wealth of Nations" in 1776, the atmosphere of the "Asiento" and the old Navigation Acts still prevailed. Trade with the colonies was reserved for the Motherland. Restrictions were relaxed and remissions were granted only for valuable consideration. From 1776 onwards the idea of the equality of foreign states *inter se*—an idea that had germinated about the middle of the seventeenth century—developed rapidly, and promoted the growth of the conception of the claim of the nationals of different states to equality of commercial treatment (see Strupp, "Wörterbuch des Völkerrechts," p. 37, *s.v.* "Meistbegünstigungs Klausel"). One of the first fruits of this movement was the conclusion by PITT, on 26th September, 1786, of a commercial treaty with France, providing for mutual reductions of tariffs (Dunham, "Anglo-French Treaty of Commerce, 1860"). In this treaty the "most-favoured-nation clause" appears, although not for the first time. All products not specified were to receive treatment in accordance with it, i.e., neither signatory was to grant to any other country more favourable rates than those accorded to the other contracting party; and if new concessions were given by either France or England to a third power, these would, subject to certain reservations, be automatically extended to the other. This treaty was inaugurated on a free trade basis. Many of the advisers of LOUIS XVI and PITT himself were influenced by that policy. Both before, and with increasing momentum after, the repeal of the Corn Laws in 1846, fresh negotiations between France and England for tariff reform were prosecuted. On 23rd January, 1860, a new Anglo-French Treaty of Commerce, due mainly to COBDEN and CHEVALIER, was signed—and the third stage in the history of commercial treaties began.

From 1860 onwards the "most-favoured-nation" clause appeared in the majority of such treaties. But Europe and America took divergent views as to the extent of the obligation that it ought to involve. According to the prevalent European doctrine, and the terms of the clause itself in its ordinary form, all advantages which either contracting party has granted in the past, or may grant in the future, to any third state, must be granted to the other party. This must be done at once and unconditionally (Oppenheim, "International Law," 4th ed., 1, 781). On the other hand, "both the executive and the judicial departments of the American Government consistently interpreted the favoured nation pledge as conditional, and contingent upon the offer and acceptance of compensation" (United States Tariff Commission Report, 1919, 37, cited in Hyde, "International Law, chiefly as interpreted and applied in the United States," Vol. II, p. 73), and held that this qualification is implicit in the clause itself, even although drafted in the unconditional form. The American Government further insisted (1) that the political and geographical relations between States—e.g., between the United States and the Hawaiian Islands or Cuba—might be such as to justify reciprocal concessions which other states might not, through the operation of the "most-favoured-nation" clause, claim to share; and (2) although with a less certain voice, that when treaties against discriminating duties are made, Governments impliedly reserve the right to favour by duties or bounties their own domestic productions or manufactures.

A variety of circumstances combined, however, to modify the traditional American attitude towards the "most-favoured-nation" clause (see Wickersham's Report on the subject to the League of Nations, *American Journal of International Law*, Vol. XXII, 1928, Supplement, pp. 132-153)—the grant, under the Convention of 10th September, 1919, revising the Berlin Act, 1885, by all Powers with possessions in Congo, of complete freedom of commerce to all the signatory States, and to those States, members of the League of Nations, who adhere to it: the proclamation of the "open door" in the case of mandated territories of the "B" class; and the imposition in the Peace Treaties, unilaterally, on the Central Powers, of a promise of unconditional "most-favoured-nation" treatment, for five years, to each of the Allied Powers (see Treaty of Versailles, Art. 267; Treaty of St. Germain, Art. 220). The American Tariff Commission, in 1919, recommended the acceptance by the United States of the principle of "complete equality in the treatment of all nations." That recommendation was adopted in the Tariff Act, 1922, and, according to Mr. Wickersham's Report, unconditional "most-favoured-nation" treatment is now "the settled policy of the United States." See agreement with Brazil, 18th October, 1923, and commercial Treaty with Germany of 10th February, 1925, one of the articles of which (Art. 8) goes so far, indeed, as to provide for reciprocal "national treatment" with regard to internal taxes, transit duties, warehousing charges and the amount of drawbacks and bounties. By "national treatment," it should be added, is meant a reciprocal stipulation that the nationals of one of the contracting parties shall be treated, as regards the points covered by the treaty, in the territory of the other contracting party, just as if they were nationals of the latter.

The problem how to safeguard their fiscal freedom against the "most-favoured-nation" clause has long exercised the ingenuity of modern States. The clause is directed against discrimination. If there is no discrimination, there is no violation of its terms. One efficient device for securing the benefit of this distinction has been the minute classification of the objects in tariff schedules. "The imposition of one rate of duty on black oils, and another and heavier one on yellow oils," may be taken as an example. "On its face, there is no discrimination: all nations are treated equally, and the only requisite for the lower duty is that the oil be black. One must know that all Russian oils are black, and most American yellow, to get the true purpose of the provision": (Wickersham, *ubi sup.*, at p. 144). Other methods of attaining the same end have been the imposition, universally admitted to be allowable if justified by the facts, of prohibitions on sanitary grounds—e.g., of the importation of Japanese silkworms on an allegation that they carry a dangerous parasite, and the adoption of the system of paying bonuses to encourage particular industries and to enable the products to be sold in foreign markets in successful competition with the domestic products of those markets.

The question of the relation of countervailing duties against "dumping" to the clause under consideration is dealt with in the Wickersham Report, as follows (*ubi sup.*, at p. 148):—

> "Countervailing duties would seem, by the weight of authority, to be against the principle of 'most-favoured-nation' treatment, but there appears to be overbearing necessity for something of the kind to stop dumping.

Consequently, it is generally allowed that countervailing duties are permissible, even though they are in technical violation of the clause, if they are used justly and as a matter of necessity. The arguments advanced to sustain the practice in general are merely *ex necessitate*. Probably a sounder argument than any other would be that, where a higher duty is imposed upon goods coming from a country which pays bounties for their production, than upon the products of other countries, instead of a discrimination contrary to the treaty provision, the countervailing duty is a means of protecting against such discrimination. But this argument is sound only when such duty is necessary to equalise conditions."

The object of the new British Act, which for obvious reasons does not apply to Empire products, is to check, not "dumping" in the ordinary sense of the importation and sale in this country of goods (*a*) at a price below the cost of production in the country of origin, or (*b*) produced under unfair labour conditions and sold here at a price with which goods decently produced cannot complete, but "forestalling," the importation and sale of goods in anticipation of the imposition of a duty (see Lord HAILSHAM'S speech in "Hansard, H.L.," Vol. 83, 73). But, in such international controversies as the new statute and any action taken thereunder by Order in Council may occasion, the question of "uniformity" or "discrimination" and the permissibility of countervailing duties will no doubt play a part. The Great War, it has been said, "passed a sponge" over the face of commercial treaties as a whole. Perhaps, as "free trade" secured a reduction of tariff dues, in the Anglo-French treaties of 1786 and 1860, it may now be reserved for "protection," through the policy in which the Act of 1931 is the first step, to achieve, subject to the claims of the Empire as a whole, a more widely extended reduction of the tariff barriers of the world.

Aerial Lien.

By IVAN CRUCHLEY, LL.B., Barrister-at-Law.

IN English Law there are three kinds of lien, possessory, maritime and equitable. The latter, which is the right to have specific property allocated to the payment of specific liabilities, need only be mentioned, for the point of interest in connexion with aerial lien arises in the possibility of the application of maritime and possessory liens to aircraft.

A possessory lien may be defined as the right enjoyed by a person who has possession of goods belonging to another to retain such goods until a debt due to him has been paid. It may be particular or general; but in any case at common law, as distinct from statute, the lien confers no right of sale (*White* v. *Spettigue* (1845), 13 M. & W. 607), and ceases if the lienor loses possession of the goods.

A maritime lien, on the other hand, is one which attaches to a vessel or ship in connexion with some liability incurred in relation to a maritime adventure; and it does not depend upon possession of the vessel or ship. The lienor, therefore, can enforce his claim no matter in whose hands the vessel or ship may be by an action *in rem* in the Admiralty Courts, resulting in the arrest of the vessel or ship and, if necessary, its sale (*The Bold Buccleugh* (1851), 7 Mos. P.C. 267). It is a lien which can be acquired by express agreement, and is usually created by the giving of what is known as a bottomry bond, or a right to have the ship's "bottom" as a security for a loan which cannot be raised on the personal credit of the shipmaster or otherwise.

In connexion with maritime lien, the case of *The Tergeste* [1903] P. 26, decided a point worthy of notice. It was held that the crew of a ship which was sold to meet the bill for wages and repairs done to it in dock were entitled to their passage money home and their wages accrued due prior to the ship entering the dock, but the shipwright by virtue of his common law possessory lien was entitled to the first claim for his charges before any wages, etc., accrued after the ship entered the dock. So long as he can retain possession it does not matter whether others have access to the liened vessel.

As applied to aircraft the topic of lien falls under two heads: first, the lien of an aircraft owner arising out of services performed by means of his aircraft; secondly, the lien *on* an aircraft.

As to the first point, it is apprehended that no difficulty arises or will arise, and that an aircraft owner will be entitled to a possessory or maritime lien in any case where such liens would normally arise or attach. For example, if goods are carried by air, the aircraft owner may retain the goods carried until payment of his charges for carriage; if services are rendered to a vessel which amount to a salvage service the aircraft owner would have a maritime lien over the vessel.

Application of the existing law to the second point may present some difficulty. To deal first with a possessory lien, it would seem to follow from the principles of English law that a possessory lien on an aircraft is possible and will arise and be governed by the ordinary rules relating to such a lien; further, that the common law rules will cease to apply only in so far as excluded by statute, as may be illustrated by reference to the American case of *Ross* v. *Spaniol et alii*, decided by the Supreme Court of Oregon in 1927. In that case the plaintiff and others, employees of one of the defendants, WOODRUFF, repaired an aeroplane which had been delivered by the owners to WOODRUFF under a repairing contract. Each of the employees filed a separate notice of lien upon the aeroplane for his share of labour expended, the claims being based upon the provisions of s. 10272 Or. L., namely:—

> "Every person . . . who has expended labour . . . upon any chattel . . . at the request of the owner, reputed owner, or authorised agent of the owner, or lawful possessor thereof, shall have a lien upon the said chattel for the contract price . . . notwithstanding the fact that the possession of such chattel has been surrendered to the owner or lawful possessor thereof."

Section 10275 Or. L. (which was also relevant) provided that:—

> "Every person who is in lawful possession of a chattel shall, for the purposes of this Act, be deemed the owner thereof, or authorised agent of the owner."

It was held (1) that the statute did not intend, except in so far as expressly stated, to create a lien unknown to the common law: (2) that the first alteration of the common law effected was to preserve the lien even if the lienor had parted with possession of the chattel; (3) that a second alteration was to confer a right of lien if the work was done at the request of the lawful possessor (as distinct from owner), but that the term "lawful possessor" designated a person who is authorised under the statute to have the work done, and not a person, viz., WOODRUFF, who himself had contracted to do the work; (4) there was no privity of contract such as was required at common law between the owners of the aeroplane and the employees of WOODRUFF. Consequently the latter had no right of lien as claimed against either the owners or WOODRUFF and the judgment of the court below in favour of the defendants was affirmed.

The more interesting and difficult point is whether or not an aircraft can be the subject-matter of a maritime lien according to the law of Admiralty. While there is no direct authority either way in English law, certain decisions in the United States of America are of great assistance. The test would appear to be whether in the particular case the aircraft can be placed in the category of vessels which was defined in *Chas. Barnes Co.* v. *One Dredgeboat* (D.C. 169) as any structure used, or capable of being used, for transportation upon water. (The term has been held to include a canal boat drawn by

horses, a boat house upon floats, a raft, a scow, a dredge.) By s. 742 of the Merchant Shipping Act, 1894, a "ship" was defined for purposes of English law as including every description of vessel used in navigation not propelled by oars. In *The Mudlark* [1911] P. 116, a hopper barge used for dredging, with a rudder, but without means of propulsion, was held to be a ship within the meaning of the Act. It will be seen that the English and American views of what constitutes a ship closely resemble each other.

In *Reinhardt* v. *The Newport Flying Service Corporation*, decided by the Court of Appeals in New York in 1921, the court of seven judges was unanimous in its decision that a seaplane while afloat was a vessel and subject to the jurisdiction of "the tribunals of the sea." The ground of the decision was that a seaplane combines in itself two functions, that of a seaplane and that of an aeroplane. In exercising the former function it is a vessel, for it is a means of water transportation, and if disabled and rescued on the high seas by a ship will be subject to a lien for salvage.

The case just mentioned did not decide that a seaplane could be the subject of a maritime lien; that was not the point at issue. But that point did arise in an earlier case in 1914, namely, *Foss (Begg Intervener)* v. *Crawford Bros. No. 2*, decided by Judge CUSHMAN in the District Court of the United States W.D. Washington, and it was held that the court had no jurisdiction to adjudicate on a claim for a maritime lien by the salvor of an *aeroplane*. It was said in the course of the judgment that aircraft

> "are neither of the land nor sea, and, not being of the sea or restricted in their activities to navigable waters, they are not maritime."

At first sight the two cases would appear to be conflicting, but it is possible to draw a clear distinction between them. In *Reinhardt's Case* the aircraft was a seaplane, not an aeroplane, a difference which is recognised in practice by the United States Treasury; an aeroplane can in no sense be said to be used for water transportation. On the other hand does the fact that seaplanes are not restricted (as other vessels are) to water navigation prevent them from being vessels? It would appear to be unreasonable if not erroneous to adopt this view. For example, one may very well conceive of a seaplane for some reason landing on the high seas and while floating in the water being involved in a collision with a ship. In such a case it is considered that the Admiralty Courts would have jurisdiction on the ground that the seaplane at the time of the collision was a vessel.

The basis of the decision in *Reinhardt's Case* may well be adopted by the English courts when the nature of a seaplane comes up for decision.

The Kylsant Case.

CONSTRUCTION OF A PENAL STATUTE.

IN drawing attention anew to the recent conviction of Lord KYLSANT, our reason is the consideration of s. 83 of the Larceny Act, 1861. It is hardly necessary to recall that Lord KYLSANT was indicted under s. 84 of the Larceny Act, 1861, and was charged with having made, circulated or published, or concurred in making, circulating or publishing a prospectus relating to an issue of debenture stock of the Royal Mail Steam Packet Company, which he knew to be false in a material particular, with intent to deceive prospective investors. Briefly, the allegation of the prosecution was that Lord KYLSANT omitted from the prospectus information about the state of the Royal Mail Company's financial position which, had it been inserted, would have resulted in no one subscribing a single penny to the proposed issue. It was said that it was that alleged omission which made the document false which was otherwise perfectly accurate as regarded the actual facts and figures stated in it.

Mr. Justice WRIGHT, in his summing up, dealing with the construction of the relevant words of s. 84: "any written statement or account which he shall know to be false in any material particular," said that the Act must be strictly construed, but reasonably so. He came to the conclusion that the above words were not limited to a case where it could be said of written statements or accounts, "here are certain figures and words which are false." He thought that that was too narrow a view of the words referring to "material particular." In his view so to construe it would be to shut out a type of fraud in connexion with any document or account which might be of the utmost importance, namely, where the document was fraudulent, not in the sense of what it stated, but in the sense of what it concealed or omitted. Mr. Justice WRIGHT correctly stressed that the Act must be strictly construed, and particularly is this essential where the statute is a penal one.

Section 83 provides that "Whosoever, being a director, manager, public officer, or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, or valuable security belonging to the body corporate or public company, or make or concur in the making of any false entry, or *omit or concur in omitting any material particular*, in any book of account or other document, shall be guilty of a misdemeanour, . . ." (The italics are the writer's.) It will be observed that in the foregoing section there are three distinct offences referred to: (1) destroying, etc., any book, paper, etc.; (2) making or concurring in making a false entry; and (3) omitting or concurring in omitting any material particular. When, however, we turn to s. 84, the next section, and the one under which Lord KYLSANT was indicted, we find only two separate offences, namely, (1) making, circulating or publishing any written statement or account which he shall know to be false in any material particular, and (2) concurring in so doing. The omission from s. 84 of a third offence, as in s. 83, of making a statement "from which he shall know that any material particular has been omitted," must, it would seem, have been either intentionally left out of the section by the legislature or must have been overlooked. It is, of course, a well-established principle that anything which has been intentionally omitted from a statute by the Legislature cannot be supplied by the court.

In *The Queen* v. *Ellis* (1844), 6 Q.B. 501, an order was made by two justices of the peace for the removal of a person to a licensed house for the reception of insane persons under the supposed authority of 9 Geo. 4, c. 40, s. 38. That statute in fact only authorised removal to a licensed house if there was no county lunatic asylum. Where, however, there was a county asylum, but it was full, the justices were not entitled to make an order for removal to a licensed house. "If we upheld such an order," said Lord DENMAN, C.J., "we should not be construing the statute but making a new enactment." And WILLIAMS, J., said that the case of the asylum being full was not one introduced into the Act, "though one might surmise that, if such a case had been contemplated, some provision for it would have been inserted." This, and other cases of a similar nature, would appear to indicate the inability of the court to supply the intentional omissions of the Legislature. *Casus omissus pro omisso habendus est.*

"PALACES" OF ENGLAND.

A young man, wearing the picturesque dress of the Hungarian peasant, was at East Ham sent to prison for ten days for travelling as a stowaway from Marseilles. He was said to be the son of a Hungarian novelist, and the suggestion was put forward that the purpose of his visit to England was to write about his experiences. The magistrate said he would be sent to "one of the English palaces."

Company Law and Practice.

CIX.

WHAT CONSTITUTES A CLASS.

Section 153 of the Companies Act, 1929, which enables a company, in certain circumstances, to compromise, and make arrangements with, its members or any class of them, and its creditors or any class of them, is one of much usefulness, and in times such as the present is not infrequently invoked. To-day I should like to call the attention of my readers to the question which is briefly indicated in the title to this column: What constitutes, within the meaning of that section, a class of creditors, or a class of members? Upon the answer to this question a good deal depends, and it is a question which must be satisfactorily answered in the early stages of any contemplated scheme of arrangement under the section, because when once the scheme has been prepared it is necessary, under the section, to have a meeting summoned by the court of the creditors or class of creditors, or of the members or class of members, as the case may be. The application for the summoning of the meeting is made by summons *ex parte*, if the application be by the company (Ord. 53B, r. 8 (*g*)), which usually is an originating summons, and the order for the summoning of the meetings will be made in chambers. But before the court will make such an order it must be satisfied that, in a case where class meetings are desired, the persons it is asked to summon to meetings are all members of one particular class; if they are not, it is obvious that the voting may be so arranged that a particular resolution may be carried, or may be lost, by reason of the votes of persons whose interests were not *ad idem* with, or even totally adverse from, those of what I may perhaps call the true members of the class. Classes of members are, as a rule, fairly easy to identify, because of the fact that, where a company has its share capital divided into differing classes of shares, their rights and privileges are exactly defined by the memorandum, or articles of association, or else by the terms of the issue of the shares. The rights of shareholders *inter se* are the subject of constant scrutiny, and as they cannot be varied without some rather special operation, they are usually well known: though, as we shall see later, this is not always the case. Classes of creditors are not so easy to determine, but general principles have been laid down by the courts which assist one to come to a conclusion, and it is to the case in which the court did so assist the practitioner that I wish principally to refer my readers to-day. In *Sovereign Life Assurance Co.* v. *Dodd* [1892] 2 Q.B. 573, a scheme of arrangement was proposed between an insurance company in liquidation and its policy-holders, and a meeting of all the policy-holders of the company was summoned, regardless of the fact that some of the policies had matured, and the moneys due thereunder were payable, while other policies were still current. The Court of Appeal held that this one meeting was not properly summoned, and that those policy-holders whose claims had matured were not bound under the section by a resolution passed at a meeting of all the policy-holders. The most instructive passage, from our point of view, in the judgments in the Court of Appeal is that contained in the judgment of Bowen, L.J., as he then was, at p. 583, where he says: "The word 'class' is vague, and to find out what is meant by it we must look at the scope of the section, which is a section enabling the court to order a meeting of a class of creditors to be called. It seems plain that we must give such a meaning to the term 'class' as will prevent the section being so worked as to result in confiscation and injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest." These last few words provide the key to the whole situation.

There is just one other case which may perhaps be referred to, as showing an application of Lord Bowen's principle to a case of members of a company as distinct from creditors: that is *Re United Provident Assurance Co.* [1910] 2 Ch. 477. In that case a scheme was proposed with regard to a company which had an issued capital consisting of fully-paid shares, partly paid-up shares, and deferred shares. Of the partly paid shareholders, some had paid moneys to the company in advance of calls, the moneys so paid being in the nature of a loan to the company, and carrying interest against the company. It was contended that those who had made such advances (which were equal to the amounts unpaid on the shares) did not form a separate class, but were, for the purposes of the section, in the same class as holders of fully-paid shares. Swinfen Eady, J., however, held that they were in a different class, and ought to have been summoned to a separate meeting. A call could not properly have been made on them alone, so as to make them into fully-paid shareholders, unless a call was also made on those not fully paid-up shareholders who had not made advances to the company.

(*To be continued.*)

A Conveyancer's Diary.

An unusual case worth noting is *Re King's Settlement: King* v. *King* [1931] 2 Ch. 294.

Keeping the Trusts off the Title—Contemporaneous Trust Deed.

The facts were as follows.

In 1925 one F. W. King ("the father"), being entitled to two freehold houses and a leasehold house, desired to convey those properties to his eldest son and his wife ("the defendants King"), having full confidence that they would look after the father, his wife and a daughter.

The father and the defendants King were all anxious that no trust should be mentioned and instructed the father's solicitor accordingly. The solicitor, however, thought that there ought to be a contemporaneous declaration of trust, and ultimately persuaded the parties to agree. The following deeds were then drawn and executed after the fullest explanation.

By a conveyance, dated in December, 1925, and made between the father and the defendants King, after reciting the father's title and that the father "was desirous of giving the hereditaments hereinafter described" to the defendants King, it was witnessed that "in consideration of his love and affection" for the defendants King, the father conveyed the freehold property to them in fee simple, and assigned the leasehold property for the residue of the term upon which it was held. That deed was executed by all the parties and registered in Middlesex.

By deed poll, of the same date, executed by the defendants King, reciting that the deed poll was supplemental to the conveyance ("the principal indenture"), and that "it was agreed prior to the date of the principal indenture" that the defendants King "should execute such declaration of trust as is hereinafter contained," it was witnessed that the defendants King declared that they held all the said hereditaments comprised in the principal indenture and the proceeds of sale thereof upon trust to pay the income thereof to their father and mother during their joint lives, and after the death of the survivor of them upon trusts for the benefit of their sister during her life and subject thereto upon trust to divide the same between the grandchildren of their father and mother.

That deed poll was not registered in Middlesex.

In 1926 the father's solicitor handed the title deeds, including the conveyance to them, to the defendants King.

The defendants King then proceeded to deal with the property as their own.

In June, 1926, they sold the leasehold property to Kerr. In 1928 they mortgaged, by a legal mortgage, part of the freehold property to Beard, and in the same year deposited the

deeds of the remainder of the freehold property with a bank to secure an overdraft on their joint account.

The action was brought by the father, mother and their daughter against the defendants King, Kerr, Beard and the bank, in which all the dealings with the properties by the defendants King were impeached. The action was not proceeded with as against Kerr, the assignee of the leaseholds.

In the state of facts which has been set out, it is clear that at first the defendants King were trustees of all the properties upon the trusts declared by the deed poll, but that on the 1st of January, 1926, the legal estate in all the properties vested in the father and mother, as together constituting the tenant for life, under the transitional provisions of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3, 5 and 6 (*c*).

It is evident that at the date of the assignment to Kerr and of the legal mortgage to Beard, the legal estate was not, in fact, in the defendants King, and they were not in a position to pass the legal estate in the leaseholds or to create a legal mortgage of the freeholds.

The question, therefore, was what were the equitable rights of the parties interested *inter se*.

It was contended for the plaintiffs that their title being first in time prevailed against that of the subsequent encumbrancers, although the latter had no notice of any trust, and that the non-disclosure of the trusts in the conveyance to the defendants King was in accordance with ordinary usage and conveyancing practice, and did not deprive the beneficiaries of their priority.

For the defendant bank and Beard it was argued that the plaintiffs lost the priority, which they might have had, by reason of the misrepresentations in the conveyance. It was said that the conveyance was framed so as to represent that the defendants King were absolute owners, and that the father and the volunteer beneficiaries claiming under him were estopped from denying the title of the defendants King against subsequent purchasers for value from them.

Of course, we all know that it was always the usual practice for a conveyance to trustees to make no mention of the trusts, or even of the fact that the grantees held upon any trusts. The plaintiffs relied upon that practice to protect them against subsequent equitable encumbrances created by the trustees, and cited *Burgis* v. *Constantine* [1908] 2 K.B. 484, in which Farwell, L.J., said: "As has been pointed out by Lord Cairns in *Shropshire Union Railways & Canal Co.* v. *The Queen*, the mere fact that a person has transferred the legal ownership of stock or shares or other property, real or personal, to a trustee and given him the title deeds or the securities or other indicia of title, does not justify any one in assuming that the person to whom such transfer is made is the beneficial owner. If the trustee does, in fact, deal with the property and convey the legal ownership to a *bonâ fide* purchaser or mortgagee for value without notice, the *cestui que* trust has to bear the loss. If such a subsequent purchaser or mortgagee does not get the legal estate, it is because he has not taken those precautions which the law allows him in order to protect himself from all risks; and he cannot set up the apparent ownership of the trustee as evidence of any misconduct or negligence on the part of the beneficial owner, because it is in accordance with the usages of mankind that the legal estate in property should be conveyed to and an indicia of title deposited with trustees, and no other member of the community, therefore, is entitled to allege that such a course of action constitutes any invitation to him from which a duty towards him can be inferred."

An earlier case, *Carrit* v. *Real and Personal Advance Co.* (1889), 42 Ch.D. 263, was also mentioned in support of the plaintiff's case, in which it was held that the ordinary forms commonly used in conveyances and assignments to trustees with a view of keeping all notice of the trust off the title are not misrepresentations on the face of the document which will displace the equitable title of a *cestui que* trust, even though they may have been fraudulently made use of by a dishonest trustee to show that he was in fact the absolute owner.

The real question to be decided, therefore, in *Re King* was whether there was anything on the face of the conveyance to the defendants King which led any persons dealing with them to believe that they were dealing with absolute owners apart from the fact that the conveyance was expressed to be made to them absolutely.

Farwell, J., held, in effect, that the conveyance to the defendants King was misleading on the face of it as purporting to be a conveyance to them by way of gift from the father. His lordship said: "*Primâ facie*, the beneficiaries' equity being earlier in date ought to prevail. But when I find that their title is based on a document in a form wholly misleading and resulting necessarily in third parties being wholly misled as to the character in which the defendants King take the property, I should be going against all equitable principles if I were to hold that the beneficiaries' equity prevailed over that of other persons acting in complete innocence and misled by the settlor through whom alone the beneficiaries claim, and I should be wrong if I allowed the equity of the settlor and his beneficiaries to prevail."

The rights of the defendant Beard and of the bank therefore prevailed over the claim of the plaintiffs.

An interesting case—and I think an instructive one.

Landlord and Tenant Notebook.

Determination by Notice to Quit for County Court Action.

By s. 138 of the County Courts Act, 1888, a landlord may sue for possession if the tenancy "shall have expired, or shall have been determined either by the landlord or the tenant by notice to quit." A landlord who sues in ejectment (s. 59) when he "should" sue for possession may be able to amend; and, if no one is prejudiced, the amendment ought to be allowed: *Dary* v. *Magnus* (1931), 47 T.L.R. 609; but he may be penalised in the matter of costs (County Courts Act, 1924, s. 7, and Ord. 5, r. 3).

The section appears to contemplate what might be called the two normal ways by which a tenancy determines: lapse of time in the case of fixed terms, notice to quit in the case of periodic tenancies. But the question may arise, whether it applies when notice to quit is expressly provided for by the terms of the agreement, and the period prescribed differs from that which the habendum would otherwise demand.

It has been pointed out that in former enactments the expression "notice to quit" was qualified: by the word "regular" in 1 Geo. IV, c. 87, s. 1; by the word "legal" in the County Courts Act, 1856, s. 50. Whether the expression has now been deliberately left unqualified is a matter which might be discussed if it were ruled that the intentions of the legislature were relevant. If so, it could be argued that in general the older statutes show that when they were passed Parliament was anxious not to give the county courts too much rope, whereas the present tendency (as manifested, e.g., by the conferring of jurisdiction in ejectment) is to increase their responsibilities.

Another repealed statute which created rights depending upon the circumstances of a notice was the Agricultural Holdings Act, 1883 (the first of the series to deal with contracting out). Section 33 spoke of tenancies where a half-year's notice to quit was "by law necessary"; and in *Barlow* v. *Teal* (1885), 15 Q.B.D. 403, when it appeared that the parties had specially agreed to "six months' notice" and that this had been given, the result was that the tenancy was outside the Act, because between landlord and tenant six months is not the same as a half-year. This decision was

applied in *Friend* v. *Shaw* (1887), 20 Q.B.D. 374, in which the jurisdiction of the county court under the 1856 statute was in issue. The agreement was for a fixed period of three years; rent was payable monthly; there was a proviso for re-entry on the rent being twenty-one days in arrear or any breach of covenant. The tenant fell into arrear and also broke a covenant to repair, whereupon the plaintiff gave him a month's notice to quit expiring at the end of the following month and sued for possession in the county court. Thus the question whether a "legal notice to quit had been given" came up for consideration. On appeal, it was held that the requirement had not been fulfilled. The definition suggested in one of the judgments, namely, "a notice where, certain circumstances having been established, the nature and character of the notice to quit follow as a matter of law from the state of the facts" sufficiently indicates the significance of the qualification to a lawyer, though to a layman it would no doubt be an instance of *obscurum per obscurius*.

A similar point was taken in *Arden* v. *Boyce* [1894] 1 Q.B. 796, C.A., decided before summary judgment could be obtained in forfeiture proceedings in the High Court. The lease was for seven years, with a provision that if the rent were three weeks in arrear the landlord might determine the term by notice to quit, or re-enter immediately. (It looks as if the document were either a layman's adaptation of a printed form supplied by a stationer, or else an ingenious professional attempt to bring the contingency within the scope of the old Ord. 3, r. 6.) The attempt to obtain judgment under Ord. 14 failed, the court taking the view that the procedure applied only in the case of what it called, without further elaboration, an "ordinary" notice to quit, and not to what was essentially a case of forfeiture. It is, perhaps, worth noting that while the words "notice to quit" are not qualified in the order, the word "determined" is qualified by "duly"; this is not the case in the County Courts Act, 1888, s. 138.

One may contrast the cautious policy of the legislature in dealing with the county courts with its lavish bestowal of jurisdiction on lay justices, as exemplified by the Small Tenements Recovery Act, 1838. The determination which brings that statute into operation is "by legal notice to quit or otherwise." The recent case of *Dudley and District Benefit Building Society* v. *Gordon* [1929] 2 K.B. 105, though it does not deal fully with the effect of the word "legal," illustrates the force of the provision. A mortgage of property within the Act provided for possession in the event of default, for attornment by the mortgagor as a yearly tenant, and that "if the society became entitled to possession" the society could thereafter determine the tenancy by seven days' notice in writing. The local justices modestly thought that this sort of thing was outside their ken, but on their stating a case it was held that full effect must be given to the words "or otherwise." The judgments do, however, suggest that the notice to quit would not be a "legal notice to quit."

Hence, there is something to be said for the contention that s. 138 of the present County Courts Act would apply even in the case of a notice in accordance with special terms in the agreement. At the same time, when one considers the section by itself, it does look as if it merely contemplated an exhaustive division of normal causes of determination, other cases to be dealt with under s. 140 (forfeiture) or s. 59 (ejectment).

Our County Court Letter.

THE EXERCISE OF HORSES ON COMMONS.

In *Cooper* v. *Lopes*, recently heard at Tavistock County Court, the claim was for £25 as damages for breach of an implied covenant for quiet enjoyment. In 1919 the defendant's predecessor in title (in return for a payment of £5 a year) had granted the sole right of exercising horses on Yennadon Down to the plaintiff, who was shortly afterwards notified by the Plymouth Corporation that the grantor had sold them part of the Down in 1916, subject to his right of exercising horses upon payment of £4 a year. The plaintiff was unaware in 1919 that parts of the moor were in different ownership, and a third party had exercised horses thereon from 1923 until 1928, being the five years comprised in the claim. The plaintiff admitted, however, that particulars of trespass had not been supplied to the defendant, who contended that (1) the third party had no right of exercising horses over the moor; (2) an injunction would have been obtained (either by the corporation or the defendant) if evidence had been supplied; (3) as the plaintiff had not given particulars, there was no case to answer. His Honour Judge Lias upheld this contention, and judgment was therefore given for the defendant with costs.

THE RULE OF THE ROAD ON THE RIVER.

In *Yorke* v. *Davison*, recently heard at Tewkesbury County Court, the claim was for £43 8s. 6d., and the counter-claim was for £10 11s. 9d., being damages for negligence arising out of a collision on the Severn. The plaintiff owned the Lower Lode Ferry, and at 11 p.m. on the night of the 30th July, 1931, his barge (which was painted white) was moored alongside the causeway, and could be seen a hundred yards away. The barge was nevertheless run into by the defendant's motor boat, which was steering a down-river course (to the right of mid-channel) and was exhibiting regulation lights, and keeping a look-out. It was pointed out that no one was in charge of the barge, which carried no lights and was an obstruction to navigation. The plaintiff's case was, however, that the barge was moored close to the bank, and (although all vehicles and barges had to carry lights) the bye-laws did not mention ferry barges. His Honour Judge Kennedy held that although the Commissioners had given no specific directions, anyone navigating the river was entitled to assume that he would be warned of the presence of an obstruction by means of lights. Judgment was therefore given for the defendant upon the claim and counter-claim, with costs.

THE REMUNERATION OF DOCTORS.

The above subject has been considered in two recent cases. In *Dunn* v. *Montague*, at Torquay County Court, the claim was for £13 13s. for professional attendance upon the defendant's wife, who had been sent to the Radium Institute for treatment. A radiologist (giving evidence for the plaintiff) stated that there had been a growth, and corroborative evidence (as to the plaintiff's treatment having been reasonable) was given by the senior honorary surgeon at Torbay Hospital. The defendant's case was that (1) the advice was given in ignorance or negligently by the plaintiff, who held out no hope of recovery, but (2) after an operation at St. Thomas's Hospital, London, it transpired that there was no malignant growth. His Honour Judge The Hon. W. B. Lindley observed that in the early stages there might have been a growth which was removed by the radium treatment. Judgment was therefore given for the plaintiff for the amount claimed, and costs.

In *Owen* v. *Thomas* at Bridgend County Court, the claim was for £12 12s. for removing the tonsils and adenoids of the defendant's child, the plaintiff's case being that the above was the usual fee, including two guineas for the anæsthetist. The defendant's case was that his general practitioner had no authority to arrange for a specialist, and that the fee was excessive. His Honour Judge Rowland Rowlands (in summing up to the jury) pointed out that the question whether the general practitioner was right or wrong did not arise, although it might be the subject of another action between him and the defendant. The jury found that the defendant was bound by the arrangements made on his behalf, and that the fee was reasonable. Judgment was therefore given for the plaintiff, with costs.

Practice Notes.

ESTATE AGENTS' COMMISSION.

(*Continued from* 75 Sol. J. 642.)

V.

In *Central Estate Agency* v. *Allan*, recently heard at Middlesbrough County Court, the plaintiffs claimed commission on the negotiation of a sale of the defendant's fried fish business, for which they had procured a purchaser at the price of £175. After signing the contract, however, the purchaser neglected or refused to complete, and the defendant obtained judgment against him for £20, as damages for breach of contract. The plaintiffs' case was that they had done everything they should have done, in order to earn their commission, but the defendant contended that the purchaser could not complete. His Honour Judge Richardson held that the contract had been signed by a person able and willing to complete the purchase, and judgment was accordingly given for the plaintiffs, with costs.

In *James and Sons* v. *Chitty*, recently heard in Bournemouth County Court, the plaintiffs claimed £11 5s. as commission on the letting of the defendant's house, for which they had secured a tenant at an annual rent of £150, in addition to rates and taxes. The signed agreement was conditional upon satisfactory references, but the defendant's wife was not satisfied with those produced, and she alleged that her husband had been induced to sign by the misrepresentations of the plaintiffs' clerk. His Honour Judge Hyslop Maxwell held that (1) the references were adequate, (2) there was no sufficient reason for non-completion, (3) the defendant's signature had not been wrongfully obtained. Judgment was therefore given for the plaintiffs, with costs.

THE TERMINATION OF SERVICE CONTRACTS.

The above subject has been considered in two recent cases. In *Jeffries* v. *Bidford and Mickleton Co-operative Society Limited*, at Evesham County Court, the claim was for £20 as damages or wages in lieu of notice. The plaintiff had been a manager at a salary of £2 10s. a week (plus a commission of 2d. in the pound on the takings of his branch), and had been given a month's notice, which had been served upon his wife on a Saturday night, when the plaintiff's keys were also taken away. The plaintiff nevertheless entered the premises the next day (Sunday) in order to fetch some of his belongings, but the defendants alleged that he had no right to be there, and installed a new manager on the Monday. The plaintiff therefore refused to take stock or work out his notice, but the defendants relied upon a document (signed by the plaintiff) to the effect that he was subject to a notice of one week (not four) and was willing to set-off a week's wages against his commission. His Honour Judge Roope Reeve, K.C., observed that documents should not be signed, unless understood, and judgment was given for the defendants, with costs.

In *Elwis* v. *Sheffield and Eccleshall Co-operative Society Limited*, at Sheffield County Court, the claim was for £6 15s. as damages for wages in lieu of notice. The plaintiff was a clerk, and, having taken the manager of her department for rides in her car after office hours, she became pregnant and reported her condition to the secretary. Both parties were summarily dismissed, but the plaintiff's case was that she only went with the manager at his instigation, in order to keep her situation. The defendants' case was that the arrangements were made in working hours, and that a high standard of conduct was necessary among a large staff. His Honour Judge Greene, K.C., held that (1) there must be some connexion between the misconduct and the employment to justify instant dismissal, (2) the defendants were justified in dismissing the man, who was in charge of women workers, but (3) as the acts in question were outside working hours, there had been no breach by the woman of her contract with the defendants. Judgment was therefore given for the plaintiff, with costs. Compare the Practice Note entitled "Departmental Manager's Length of Notice" in our issue of the 1st November, 1930 (74 Sol. J. 726).

Reviews.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XIII. Part IV. November, 1931. London: Society of Comparative Legislation. 6s.

Dr. Baty writes in this part on the "Future of Prize Law and the Freedom of the Seas," pleading for the protection of neutrality, "with its rights and obligations."

Mr. W. I. Jennings has an article, written in a frank and entertaining style, on "Disraeli and the Constitution." His conclusion is sound that Disraeli's influence on the working constitution was great; whether it was for good or ill he will not pronounce. We suspect that, like all men's influence, it was for both.

Dr. Van Pittius writes thoughtfully and suggestively on "Dominion" nationality, and Professor Berriedale Keith has "Notes on Imperial Constitutional Law."

Dr. Stallybrass compares the draft of the new Italian Penal Code with English Criminal Law. The comparison is illuminating. But if being fined or imprisoned for an act brings it within the category of "criminally justiciable in England," *mens rea*, in these days is not an element *sine qua non*.

There are other useful papers and notes which we cannot comment upon within the space available. The Society which produces the journal does excellent work and deserves wider support than it gets.

Lord Cave. A Memoir. By Sir Charles Mallet. With an introductory chapter by Countess Cave of Richmond. 8vo. London: John Murray. 1931. pp. x, and (including Index) 334. 15s. net.

This memoir of a distinguished lawyer and judge is admirably written, and, although confined within modest limits, it tells us all we can claim to know of the life and work of the subject. Moreover, it demonstrates once again how an apprenticeship to local politics may be the prelude to distinguished service in a more august sphere. The introductory chapter by Countess Cave reveals the home life of her husband in all its charm and happiness; the chapter is written, as a painter said of one of his portraits, lovingly. Sir Charles Mallet, who is responsible for the remainder of the volume, has also done his part to admiration, recounting with clearness and affection the story of Lord Cave's career from his schooldays to the surrender, during his last illness, of the Great Seal at the end of a life marked by an amazing record of work, done quietly and with an exemplary thoroughness. An untiring worker, Goethe's motto "*Ohne Hast, ohne Rast*," might well have been Cave's also, for he laboured incessantly and without rest, yet without haste. In the high offices which came to him, unsought, in the law, in politics, and in his beloved University, he showed his capacity in a pre-eminent degree, and it is a striking tribute to the faithfulness with which he discharged the duties falling to him that he never made an enemy even in the days when party feeling ran high and the political atmosphere was charged with electricity. All he said and did was said and done without the accompaniment of rhetorical fireworks; he was endowed with a sweet reasonableness, he had a gift of persuasiveness, and these qualities made a cogent appeal to those who listened to him. Those who remember him at the Bar will recall the quiet competence with which he put his points, and this, accompanied as it was by a complete

knowledge of whatever subject he handled, won for him a commanding position in the courts and in the esteem of those before whom he practised. He enjoyed a large practice and was making a good, although not a spectacular income, which was increasing year by year. During his last year of private practice he was offered a brief marked 5,000 guineas and was compelled—such was the irony of fortune—to return it on accepting office under the Crown. As a Lord of Appeal and, later, as Lord Chancellor, he ever showed patience, courtesy, and a firm determination to get at the kernel of the problem with which he was faced. It is said that he never made a mistake in his law, and we know how greatly, in his last illness, he was tormented by the thought that a mistake on a question of fact might have led him and his colleagues on the Judicial Committee of the Privy Council into doing an injustice, and although a mistake in fact had been committed it was subsequently held that it in no way affected the result which had been arrived at. The incident brings out in striking fashion his passion for justice. It is said that he was the first Lord Chancellor for 200 years to wear a moustache, but this fact, adds Sir Charles Mallet, "did not lessen the dignity with which he presided on the Woolsack, or the impressiveness of the tall, imperturbable figure who brought kindliness as well as counsel to every gathering in which he took part."

The Howard Journal. 1931. Vol. III. No. 2. London: The Howard League for Penal Reform. Free to members.

This is an exceptionally good number. It contains an able article by "A Solicitor" on appeals from courts of summary jurisdiction. His grounds of complaint are fully made out and have long been known to and deplored by all those concerned in the work of police courts, including many magistrates and justices themselves. We doubt whether the county court would be a suitable appeal court, but that a suitable and cheap method of appeal could and ought to be devised is certain.

The French penal settlements have long troubled thoughtful people interested in prison work. The conditions are dreadful. They cannot be anything else. Whether the animadversions of the civilised world will shame the French official world or harden their hearts it is difficult to tell. We are sure that if the facts were widely known to the French people there would be a very rapid change. The slackness of the Trinidad courts in exercising their extradition jurisdiction in respect of prisoners escaped from the penal settlement has recently formed the subject of a decision of the Privy Council (see p. 756, *ante*). That appeal was rendered possible by the prompt and effective action of the Howard League. Articles on this subject are therefore very much in place in the League's organ.

We can notice but one other paper, Mr. Norman Bentwich's article upon "Law and Justice in Russia," reprinted from *The Listener*. He himself touches the bad spot when he points out that the ordinary courts do not deal with counter-revolutionary offences, which are tried by an administrative tribunal in secret, without public, witnesses or advocates, and without appeal.

Books Received.

The Parliament-House Book for 1931–32. One hundred and seventh publication. Crown 8vo. Edinburgh: W. Green and Son Limited. 21s. net.

Leading Cases and Statutes on the Law of Real Property. I. S. Rabin, LL.B. (Lond.) Large Crown 8vo. pp. xiii and (with Index) 440. London: Sweet & Maxwell, Ltd. 21s. net.

Company Transfer Work. A Practical Guide to Share Registration and Transfer Work. Second Edition; Revised and enlarged. J. A. White, Secretary of the Associated Portland Cement Manufacturers, Ltd. Demy 8vo. pp. 134 (with Index). London: Effingham Wilson. 7s. 6d. net.

In Lighter Vein.

The Week's Anniversary.

John Mellor was born on New Year's Day, 1809. Exhibiting early a strong independence of mind, he renounced admission to Oxford University rather than subscribe to the Thirty-nine Articles. He went to the Bar, joined the Midland Circuit, became Recorder first of Warwick and then of Leicester, and sat in Parliament for a short time as Liberal Member for Great Yarmouth. In 1861 he succeeded Sir Hugh Hill as a Justice of the Queen's Bench, and in this capacity assisted at several famous trials, including those of the Manchester Fenians in 1867 and of the Tichborne claimant in 1873. The little touch of entirely unconscious irony with which the Dictionary of National Biography gravely treats of his later days is worth quoting. "In June, 1879, being troubled with increasing deafness, he retired on a pension and was sworn of the Privy Council. Thereafter he often attended the Judicial Committee, went the Northern circuit once as commissioner of assize and frequently acted as arbitrator in important cases."

Strictly Obiter.

A recent divorce case unsuccessfully defended by a respondent and co-respondent who had admittedly slept in the same bed irresistibly recalls the too vigorous comment of a certain Lord Justice Clerk in a Scottish case. Wearied by the obstinate denials of a co-respondent who had been found in a hopelessly compromising situation, he at length exclaimed: "Well, if the man didn't commit adultery, he ought to have done." The Bar were extremely anxious for it to get into the official reports: "*Obiter* by the Lord Justice Clerk—Circumstances in which adultery should be committed."

The Case of the Oyster.

"When you have finished going to law," Judge Cluer told a woman recently, "you will find, as the old saying has it, that you have got one shell, your opponent has the other and the lawyers have got the oyster." His Honour was, of course, alluding to La Fontaine's famous fable, in which the quarrel between two travellers who have found one oyster ends with their being awarded a shell each (without costs). But, note well in these days when the cry of "arbitrate, don't litigate" has gone forth in the Strand, the perpetrator of this ingenious judgment was not a lawyer at all, but an arbitrator—the stock arbitrator of contemporary French satire, "Perrin Dandin." When he first turns up in Rabelais the description of him is "*quoy que juge ne feust mais home de bien.*" Still, his sins are put upon the lawyers against whom, as Judge Cluer said, the moral is clearly directed. I translate freely the last lines of the fable:—

> "See what it costs to litigate to-day,
> What families have barely saved a rag;
> Perrin is sure to bear the stakes away—
> The suitors put the skittles in the bag."

Good Character.

The Tottenham witness who recently remarked, "He is a lazy, good for nothing youth, but I have nothing against his character," exemplified the sort of danger that lurks in evidence as to character. Of the same temper was the witness called to testify to the good fame of a man on trial before Chief Baron O'Grady for cow-stealing. "As honest, decent, well-conducted a man, my Lord, as any in Ireland which all the neighbours knows" was his praise. "Only—only," he added hesitating, "there was something about stealing a cow."

Mr. Edmond L. Pattisson, solicitor (Messrs. Hore, Pattisson and Bathurst), 48, Lincoln's Inn Fields, left estate of the gross value of £5,139, with net personalty £4,038.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Liquidation of Insolvent Club.

Q. 2366. I have been instructed by the trustees to wind up an insolvent club registered under the Friendly Societies Act, 1896. Do you deem it safe to distribute the assets without applying to the court for a winding-up order? The Registrar of Friendly Societies suggests that if all creditors can be got to agree to a settlement of their debts a request for cancellation of registration might be made. I should be glad to know whether you consider this latter mode of procedure quite safe, and if so, what special advertisements for creditors should be issued, and what other special procedure, if any, followed. I can find no warrant for this procedure in the Friendly Societies Act. In case of a winding up by the court am I safe in obtaining the authority of the trustees to deduct costs to date of petition from assets in my hands before presenting such petition? If so, would the authority of one of the trustees be sufficient? Please also inform me which of the many books on company law you advise for this matter, stating publishers and price.

A. The question as to whether it is safe to distribute the assets without a winding-up order by the court depends upon the nature and amount of the assets, e.g., are they likely to appreciate in value, so as to render the club solvent again? If not, the authority of the trustees will justify the distribution. The procedure by cancellation of registration will have the advantage of cheapness (thus providing more assets to distribute), and again, it will be necessary to consider whether there is any probability of an appreciation in the value of the assets. Even if the creditors consent, a member might object by reason of the loss of potential benefits. The circumstances are probably within the knowledge of the Registrar, and, if his advice is followed, any objector would have difficulty in obtaining damages for negligence against the solicitor or for breach of trust against the trustees. No special advertisements are required, but a form could be adapted from the precedents of notices by executors on the distribution of estates of deceased persons. A winding up by the court appears to be an unjustifiable expense, and the question of costs prior to petition therefore does not arise. Although jurisdiction exists to wind up under the Companies Act, 1929, the subject is not fully dealt with in books upon company law, and reference should be made to "Fuller on Friendly Societies" (Stevens & Sons, Limited).

Ambiguity in Parcels.

Q. 2367. In 1920 property was conveyed to AB from MN and described as follows:—

> All those pieces or parcels of land containing 8½ acres or thereabouts with the messuage or dwelling-house and premises thereon situate at C and now in the occupation of BS which said premises are more particularly described in the First Schedule hereto and are delineated on the plan drawn hereon and thereon coloured pink and edged with red.

The first schedule contained (*inter alia*) the following particulars:—

No. on Plan.	Description.	Area.
120	House Orchard & Garth etc.	2.540

A plan is attached which shows the dwelling-house and outbuildings and also a club room. The site of the latter is clearly included in the plan. The house, land and buildings were in the occupation of BS, but not the club room. AB, who does not appear to have received any rent for the club room, died in 1929, and his personal representatives sold the property in 1931 to WA for £400, under a similar description and a reference to the plan on the conveyance of 1920. WA claimed rent from the secretary of the club. The letter was sent to MN who now claims that the club room was not included in the conveyance to AB. In support of MN's claim his solicitors say the property was described as in the occupation of BS, but that the club room was never in the occupation of BS, and further that no claim was made by AB for rent, and a claim was first made recently by WA, and that MN has been receiving rent for the club room and MN will not admit WA's claim. WA grounds his claim on the fact that the site of the club room was included in No. 120 shown in the conveyance and on the plan, and that the club room therefore passed to AB, and then to WA. This contention seems to be supported by *Eastwood* v. *Ashton* [1915] A.C. 900. The secretary of the club stated to WA that no rent has been paid to MN since the conveyance to AB, but no mention of this by WA has been made to MN's solicitors, as there seems to be some uncertainty. No rent has been paid to AB or WA by the club room committee. (1) Has WA a good claim to the club room? (2) What action should be taken to establish his claim and in what court? (3) The club room is now occupied by the club and it is anticipated that they will not pay rent or enter into an agreement with WA so long as the property is claimed by MN. (4) Would you advise an action for possession or ejectment against the club room?

A. The opinion is given that the contention of WA is supported not only by the case cited, but also by *Norman* v. *Norman* [1919] 1 Ch. 297. The phrase "now in the occupation of BS," is therefore, an explanatory comment, which cannot override the precise description elsewhere in the parcels, viz., in the schedule and on the plan. The interpretation of the above phrase must also depend upon hearsay evidence, which is inadmissible to construe the conveyance. In answer to the specific questions: (1) WA has a good claim to the club room. (2) WA should sue the club for rent in the County Court, provided that the defendants will consent in writing at the hearing under the County Courts Act, 1888, s. 61. (3) and (4) There appears to be no need to claim possession or ejectment, as the club are apparently willing to pay rent to any landlord who can give a good receipt. It should be ascertained under what Act (if any) the club is registered, in order to ascertain whether to sue the club in its own name or through its trustees. If the club is unincorporated or not registered, the officials should be sued in their representative capacity for and on behalf of the X club.

Auctioneers—Sale on Behalf of Clients not Legal Owners.

Q. 2368. X Limited, being already indebted to Z & Co. (auctioneers and valuers) in £50 for valuation fees, instructed Z & Co. to sell certain movable buildings on land which X Limited had contracted to buy. Z & Co. sold accordingly, and, having set off the net proceeds of sale, £39, against the debt of £50 due to them, rendered to X Limited an account showing a balance of £11 due to them. Meanwhile X Limited, being unable to complete their purchase of the land through

lack of funds, assigned their contract to A (wife of one of the two directors of X Limited), who herself completed the purchase of the land. This assignment of the contract was made entirely unknown to Z & Co. A is now claiming from Z & Co. £39, the net proceeds of sale of the buildings. X Limited have gone into liquidation and are without assets. Z & Co. decline to pay A, claiming to have lawfully appropriated the £39 by virtue of their right of set off. A's solicitors are now commencing proceedings. Have not Z & Co. a good defence to the claim on the foregoing facts ?

A. It is somewhat difficult to follow the case without further details as to dates, etc. It is gathered that Z & Co. accepted and acted on instructions to sell chattels for X Limited at the time when the chattels were not the property of X Limited; and also that they never became the property of X Limited. If this is so Z & Co. would seem to be liable for conversion to the real owner (see *Consolidated Co.* v. *Curtis* [1892] 1 K.B. 495), unless it can be shown that the property in the buildings and right to possession free from incumbrances actually passed to X Limited. Z & Co. are liable in some form of action to pay the value of the buildings.

Rent Restrictions Acts—Statutory Tenant—Notice.

Q. 2369. A granted a lease to B of certain premises for fourteen years from the 25th March, 1916. The lease contained an option for either A or B to terminate the tenancy at the end of the first seven years on six months' previous notice in writing. A duly exercised this option and gave notice terminating the lease on the 25th March, 1923. B claimed the benefit of the Rent Restriction Act and remained in possession, paying rent thereafter quarterly as had been previously done. B has now given three months' notice of his intention to quit and deliver up possession of the premises. A claims that he should give six months' notice, being the length of notice contemplated by the lease as necessary to terminate the tenancy. B claims that pursuant to s. 15 of the Rent Restriction Act, 1920, three months' notice is the proper length. Which is the correct contention ?

A. Section 15 contemplates a contract of tenancy terminable by notice by the tenant if the landlord had not determined it. In this case there was not a right to the tenant to determine an indefinite tenancy by notice, but merely a right to determine the lease on a given day. The three months' notice is sufficient.

Power of Attorney—Mode of Execution of Deed under.

Q. 2370. Before the L.P.A., 1925, a deed might be executed under a power of attorney by the attorney in the name of the principal. Since the same it may be so *or* in his own name, but if in the latter the power must be filed, etc. If since the Act a deed is executed by an attorney under power in the name of the principal in the presence of and attested by a witness, presumably no reference need be made to the power nor need it be filed. Is this so ?

A. Section 123 of the L.P.A., 1925, is in the main a mere re-enactment of s. 46 of C.A., 1881, and effects no change in the law. We do not agree that if a deed is executed in the name of the attorney the power must on that account be filed. The proper method of executing a deed in the name of the principal is as follows: "A.B. (principal) by C.D. (the attorney)." We certainly think that the attestation clause should refer to principal and attorney, but the power need not be mentioned. There is no obligation (except in special cases) to file the power on the execution of a deed in the name of the principal. An alternative method of execution in the name of the principal is: "A.B. by his attorney C.D." It is not unusual to refer to the power in the testimonium. The reply to the query is thus in the affirmative.

Notes of Cases.

House of Lords.

Stag Line, Ltd. *v.* **Foscolo Mango & Co., Ltd.**

10th December.

Shipping—Charter-party—Liberty to Call at Ports for Bunkering—Reasonable Deviation Carriage of Goods by Sea Act, 1924, Sched., Art. IV, r. 4.

This was an appeal from the Court of Appeal affirming a decision of MacKinnon, J.

The questions raised were (1) whether the exception of perils of the sea was displaced by a deviation of the ship having regard to the Carriage of Goods by Sea Act, 1924, Sched., Art. IV, r. 4, and (2) whether the deviation was within the contract of carriage giving liberty to call at any ports "for bunkering or other purposes." The action was brought by the respondents to recover damages for the loss of a cargo of coal shipped in the appellants' steamship which was stranded on the Cornish coast and totally lost. The vessel was turned out of its direct course in order to land two men at a port which was not in any part of the specified route. But the appellants by their defence relied on the words "other purposes" as justifying the deviation, and they also contended that the deviation was reasonable within the meaning of the Carriage of Goods by Sea Act, 1924. MacKinnon, J., held that the appellants had failed to prove that the deviation was reasonable and that the liberty to call at ports must be limited to calling for purposes *ejusdem generis* with bunkering. That decision was affirmed by the Court of Appeal, and this appeal was then brought.

Lord Buckmaster, in delivering judgment, said the respondents sought to recover damages for loss of cargo on the ground that there had been an unlawful deviation from the contracted course. With regard to the clause in the charter-party, he was not prepared to define what were the limitations within which the phrase "other purposes" must be confined, but he could find nothing kindred to bunkering that was involved in landing the two men. The real difficulty in the case was whether, in the circumstances, the deviation was "reasonable." It hardly needed the great authority of Lord Herschell in *Hick* v. *Raymond* [1893] A.C. 22, to decide that in construing such a word it must be construed in relation to all the circumstances. Every condition and every circumstance must be regarded and must be reasonable, too, in relation to both parties to the contract and not merely to one. In this case three judges had decided that the deviation could not be regarded as reasonable, and he was not prepared to differ from the conclusions that they had reached For those reasons he thought the appeal should be dismissed.

Lords Warrington of Clyffe, Atkin, Russell of Killowen and Macmillan agreed.

Counsel: *Dunlop*, K.C., and *Sir Robert Aske*; *A. T. Miller*, K.C., *Le Quesne*, K.C., and *R. F. Hayward*.

Solicitors: *Holman, Fenwick & Willan*; *Charles Lightbound, Jones & Lightbound*, for *Ingledew & Co.*, Newcastle-upon-Tyne.

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

Judicial Committee of the Privy Council.

Abeyesekera *v.* **Jayatilake.**

Lord Dunedin, Lord Blanesburgh and Lord Darling.
9th November.

Penalty—Common Informer—Ceylon—Proceedings Prohibited by Order in Council Validity of Order—Retrospective Indemnity.

In the District Court of Colombo the present appellant, D. C. W. Abeyesekera, as a common informer, sued D. B.

Jayatilake by virtue of Art. XVI of the Ceylon (Legislative Council) Order in Council, 1923, alleging that Jayatilake, having been elected before 1927 a member of the Legislative Council of Ceylon, had, in April, 1927, as editor-in-chief of the Etymological Dictionary of the Singhalese language, gained or obtained a direct or indirect pecuniary interest in a contract with the Government of Ceylon for or on account of the public service within the meaning of Art. XVII of the Order in Council of 1923. The appellant further claimed that by reason of the premises the respondent's seat in the Legislative Council had become vacant in April, 1927, and that he had nevertheless sat and voted in the Council on various specified dates since 1927, and had thereby incurred a penalty amounting to a total of Rs.23,000, which he (the appellant), by virtue of Art. XVI of the Order in Council of 1923, was entitled to recover in the action which he had begun. On the 1st November, 1928, however, an Order in Council was made, providing that no action, prosecution or legal proceeding whatsoever under the provisions of the material Articles of the Order in Council of 1923 or otherwise should be brought against the respondent as editor-in-chief of the Singhalese Etymological Dictionary in respect of his having sat or voted on the Council in the period complained of. On a motion filed on behalf of the respondent that inasmuch as the Order in Council of 1928 had come into operation since the date of the order fixing the appellant's action for trial, the judge of the District Court dismissed the appellant's action, and that decision was affirmed on appeal to the Supreme Court of Ceylon. The appellant now appealed, and the sole question for decision was the validity of the Order in Council of 1928.

Lord DARLING, giving the reasons of the Board for dismissing the appeal said, that in their lordships' opinion, there was power in His Majesty to make the Order in Council objected to. It was argued that the Order in Council of 1928 was *ultra vires* as affecting to take away rights already in existence, thus having a retrospective action. The effect, however, of that Order in Council, as expressed on the face of it, was no more than an act of indemnity and relief in respect of penalties incurred. Legislators had certainly the right to prevent, alter or reverse the consequences of their own decrees. Indeed, in the last session of the parliament which had just ended, legislation, precisely similar to that here called in question, was passed to deprive a plaintiff of penalties already accrued by reason of breaches of the Lord's Day Act. Appeal dismissed.

COUNSEL: *Leslie de Gruyther*, K.C., and *H. I. P. Hallett*, for the appellant; *A. M. Dunne*, K.C., and *C. J. Colombos*, for the respondent.

SOLICITORS: *O. A. Cayley*; *H. S. L. Polak*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Attorney-General *v.* Lewis & Burrows Ltd.

Rowlatt, J. 16th November.

REVENUE—MEDICINE STAMP DUTY—SPECIFIC PREPARATION—VAPOUR RUB—ORIGINAL OR FIRST VENDORS—WHETHER MIXTURE "KNOWN, ADMITTED OR APPROVED"—MEDICINES STAMP ACT, 1812 (52 Geo. III, c. 150), s. 2.

In this action the Attorney-General, on behalf of the Crown, sought to recover from Lewis & Burrows, Ltd., retail and dispensing chemists, a penalty of £10 under the Medicines Stamp Act, 1812. It was alleged that the defendants had sold a substance known as "Vapour Rub," recommended on the wrapper for chest and throat complaints, without the article bearing the stamp required by the Act.

ROWLATT, J., said that the question turned on whether the defendants could bring themselves within the special exemptions in the schedule to the Act. It was said that they failed to do that in two respects. The first point was made that they were "the original or first vendors," within the words of one of the limitations of the exemption. In *Farmer* v. *Glyn-Jones* [1903] 2 K.B. 6, it was held that a retailer buying a preparation from the wholesalers and then bottling it and affixing a commendatory label was not the "original or first vendor." The Solicitor-General had sought to distinguish the present case from *Farmer's Case* on the ground that here the article was ordered to be made up specially for the defendants, so that the position was the same as if the defendants had made it themselves by their own employees on their own premises. He (his lordship) could not give effect to that distinction. Though the article was ordered the transaction was a sale as much as it was in *Farmer's Case*. The other point was whether the substance was a "mixture, composition, or preparation," of which the "different denominations, properties, qualities, virtues, and efficacies" were "known, admitted, and approved of in" the relief of human ailments. The facts were that the formula, according to which the vapour rub was made up, was to be found in the *Pharmaceutical Formulas*, but under the name of "Chest Vapour Rub." The term "Vapour Rub" *simpliciter*, as describing a particular article, had not been used until in 1929 the defendants began to sell the preparation now in question. In those circumstances, if the defendants had described their article as "Chest Vapour Rub, P.F., 1," he (his lordship) would have held that its denominations, properties and so on, were known, admitted, and approved of by reason of the circumstance that "Chest Vapour Rub," with its formula, appeared in *Pharmaceutical Formulas*. The properties of "Vapour Rub," *simpliciter*, were not known, etc., by reason of the fact that those of "Chest Vapour Rub" were, unless it was also known that the two articles were the same. It seemed to him that there was no evidence of that latter knowledge, and the Crown were therefore entitled to succeed on that point.

A stay of execution was granted, pending appeal.

COUNSEL: *The Solicitor-General* (Sir Thomas Inskip, K.C.) and *W. Bowstead*, for the Crown; *Sir Albion Richardson*, K.C., and *H. Glyn-Jones*, for the defendants.

SOLICITORS: *Solicitor for Customs and Excise*; *C. H. Kirby*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Koffman *v.* Sunshine and Another.

Avory, Humphreys and Macnaghten, JJ. 18th November.

COUNTY COURT—PARTNERSHIP ACTION—PARTNERSHIP DISPUTED—JURISDICTION OF COURT—COUNTY COURTS ACT, 1888 (51 & 52 Vict. 43), s. 67 (7).

Order *nisi* for a mandamus.

Mrs. S. Sunshine, who carried on business as a manufacturing furrier at Hackney, London, had for many years employed as a cutter a Mr. I. Segall. She also employed J. I. Koffman as a cutter from October, 1930. Koffman alleged that a verbal agreement was entered into by Mrs. Sunshine, Mr. Segall and himself, on the 30th December, 1930, to form a partnership at will for the purpose of carrying on the business and on the terms that the profits should be shared equally between them. Koffman alleged that the partnership was dissolved on the 14th April, 1931, and that he had not received the balance of the profits due to him. In May, 1931, he brought an action against Mrs. Sunshine and Mr. Segall in the Southampton County Court, claiming a declaration of partnership, an account and £47 0s. 2d. as his share of the partnership profits. The defendants denied the alleged agreement and that there had been a partnership. In the county court the defendants objected that that court had no jurisdiction to entertain the action. The county court judge held that as there was a dispute as to the existence of the partnership, he had no

jurisdiction to order an account, and he dismissed the action. Koffman, on the 13th July, 1931, obtained an order *nisi* calling on the judge and the defendants to show cause why the judge should not proceed to hear and determine the action on the ground, *inter alia*, that he was wrong in holding that where the partnership was disputed he had no jurisdiction to order an account.

AVORY, J., said that it was said that the county court judge was right, inasmuch as s. 67 (7) of the County Courts Act, 1888, only applied where there was an action for the dissolution of an admitted partnership. The only question was whether this was an action or matter for the dissolution or winding up of a partnership. It was said that sub-s. 7 only applied to an admitted partnership, and that the defendants by denying the partnership ousted the jurisdiction of the county court. That view could not be right, the county court had jurisdiction to entertain the action, and the order *nisi* should be made absolute.

HUMPHREYS and MACNAGHTEN, JJ., gave judgment to the same effect.

COUNSEL: *J. P. Eddy* showed cause; *Ashe Lincoln* supported the order.

SOLICITORS: *Bishop & Fenton-Jones; Gustavus Thompson and Sons* for *Max Turk*, South Farnborough.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Vauxhall Estates, Limited *v.* Liverpool Corporation.

Avory, Humphreys and Macnaghten, JJ.

18th November.

COMPULSORY PURCHASE — CITY IMPROVEMENT SCHEME ASSESSMENT OF COMPENSATION—ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919 (9 & 10 GEO. 5, c. 57), s. 7 (1)—HOUSING ACT, 1925 (15 Geo. 5, c. 14), s. 46.

Special case stated by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919.

The respondents in this case, the Corporation of Liverpool, propounded a scheme for the improvement of the Queen Anne-street area of the city, under the Housing Act, 1925. The Minister of Health made an order confirming the scheme on the 23rd November, 1928, the order incorporating the Land Clauses Act, 1845, as modified by the Acts of 1919 and 1925 above referred to. The Vauxhall Estates, Limited, the present claimants, owned certain freehold land and the houses thereon within the area affected by the scheme, and so included because of the insanitary condition of the premises, or because they were dangerous or injurious to health, or were required for the purpose only of making the scheme efficient. The question was, on what basis the assessment of the compensation, payable by the corporation to the claimants, should be made.

AVORY, J., held that the award of the arbitrator assessing compensation on the basis of s. 46 of the Housing Act, 1925, should be affirmed. The claimants had contended that section 7 (1) of the Acquisition of Land (Assessment of Compensation) Act, 1919, was to have effect to the extent that s. 46 of the Housing Act, 1925, was to be regarded as of no effect. Even if it were permissible to read the earlier part of s. 7 as applying to future Acts (which the marginal note to the section showed not to be the case) the question still remained whether, if the provisions of s. 46 of the Act of 1925 were inconsistent with those of the Act of 1919, the latter ought not to prevail in accordance with the maxim *leges posteriores priores contrarias abrogant*.

HUMPHREYS and MACNAGHTEN, JJ., agreed that the compensation must be assessed on the basis of s. 46 of the Act of 1925.

COUNSEL: *H. A. Hill*, for the claimants; *Montgomery*, K.C., and *H. P. Glover*, for the respondent.

SOLICITORS: *W. W. Wynne & Sons*, for *T. J. Smith & Son*, Liverpool; *F. Venn & Co.*, for the *Town Clerk*, Liverpool.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

The Law Society.

HONOURS EXAMINATION.

NOVEMBER, 1931.

(The names of the solicitors to whom the candidates served under Articles of Clerkship are printed in parentheses.)

At the Examination for honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the Examination Committee recommended the following as being entitled to Honorary Distinction :—

FIRST CLASS.

(In order of merit.)

1. Keith Eric Lauder (Mr. Albert Edward Lauder, of London).
2. William Ernest Baker Pryer, M.A. Oxon (Mr. Frank Treasure, of the firm of Messrs. Treasures, of Gloucester).
3. Morris Bennett, LL.B., London (Mr. Harry Borradaile, of the firm of of Messrs. Woodham Smith & Borradaile, of London); Francis Charles Forbes (Mr. Arthur Dudley Julius, B.A., of the firm of Messrs. Birkbeck, Julius, Edwards & Co., of London); Harold Kenneth Hockenhull (Mr. Frederick Horace Cooke, M.A., of the firm of Messrs. Fredk. Cooke and Son, of Crewe); Thomas Norman Lockyer, LL.B. London (Mr. Francis Charles Coningsby, LL.B., of the firm of Messrs. Francis Coningsby & Co., of London); Walter Horace Mulley (Mr. Henry Simon Batley Jackaman, of the firm of Messrs. Jackaman & Sons, of Ipswich, and Messrs. Haslewood, Hare and Co., of London).

SECOND CLASS.

(In alphabetical order.)

John William Vaughan Banks (Mr. William Allan Scott, of the firm of Messrs. Field, Roscoe & Co., of London).

John Colin Blake (Mr. William Fergus Youde, of the firm of Messrs. Walker, Smith & Way, of Chester).

Frederick Noel Charlton, B.A. Oxon (Sir Robert Clermont Witt, M.A., C.B.E., of the firm of Messrs. Stephenson, Harwood & Tatham, of London).

Henry Walter Aldridge Clifford (Mr. Henry Gouger Stapylton-Smith, of the firm of Messrs. Prance, Stapylton-Smith & Son, of Bexhill-on-Sea; and Mr. John Berkeley de Fontblanque, of London).

Leslie Robert Spencer Cork (Mr. Kenneth Galbraith Thomas, B.A., LL.B., of the firm of Messrs. Kenneth Brown, Baker, Baker, of London).

Knightley Holled Coxe (Mr. John Arthur Stephen Baily; and Mr. Charles Parry Williams, of the firm of Messrs. Baily and Williams, both of Saffron Walden; and Mr. Harry Borradaile, of Messrs. Woodham Smith & Borradaile, of London).

Robert Stanley Deacon (Mr. Roland Hollick, of the firm of Messrs. Roland Hollick & Co., of Coventry).

Geoffrey Ernest Maurice de Sainte Croix (Mr. Robert William Charles, of the firm of Messrs. Charles, Malcolm and Wilson, of Worthing; and Messrs. Burton, Yeates & Hart, of London).

Eric Dickinson (Mr. Arthur Eckersley Hope, of Atherton).

Leonard William Funston (Mr. Herbert Harvey Moseley, M.A., B.C.L., of London).

Geoffrey Elmer Garrett (Mr. Everard Kenneth Brown, M.B.E., of the firm of Messrs. Kenneth Brown, Baker, Baker, of London).

Arthur Goldberg, LL.B. London (Mr. Isaac Foot, M.P., of the firm of Messrs. Foot, Bowden & Blight, of Plymouth).

John Holt, LL.B. London (Mr. Thomas Ernest Jobling, of the firm of Messrs. Jobling & Jobling, of Burnley).

Thomas Theophilus Jasper (Mr. Alfred Leonard Locke, of the firm of Messrs. Stephens, Locke & Abel, of Southampton).

William Francis Bell Nott (Mr. Montague Goodman, of the firm of Messrs. Goodman, Saunders, Squires & Co.; and Mr. Herbert Thomas Traer Harris, B.A., of the firm of Messrs. Garrard, Wolfe, Gaze & Clarke, both of London).

Philip Sugden Porter, LL.B. Manchester (Mr. Richard Nelson, of the firm of Messrs. Cooper, Nelson & Hamer of Bolton).

Joseph Rosenbloom, LL.B. London (Mr. Samuel Sebba, LL.B., of London).

Kathleen Rushworth (Mr. Sidney Ormerod Taylor, O.B.E., of Blackpool).

Cyril Howard Russon, LL.B. Birmingham (Mr. Francis Henry Pepper, of the firm of Messrs. Pepper, Tangye and Winterton, of Birmingham and London).

Henry Samuel Simon (Mr. Frederick Hyman Bloom, of Middlesbrough).

Robert Arthur Slessor, B.A., LL.B. Sheffield (Mr. Lewis Emanuel Emmet, of the firm of Messrs. Taylor & Emmet, of Sheffield; and Mr. Thomas Edward Penny, of the firm of Messrs. Penny & Son, of Berkhamsted).

Kenneth Gwynne Tudor (Mr. Arthur Onesimus Bevan, of the firm of Messrs. Whiteley & Bevan, of Nantwich).

Arthur Edgar Marshall West, LL.B. Leeds (Mr. Norman Ligitwood Fleming, of Bradford).

John Edward Westwood, LL.B. London (Mr. Walter Albert Brook; and Mr. Edward Charles Frend, B.A., both of Tunbridge Wells).

David Archibald Price White (Mr. John Pentir Williams, B.A., of the firm of Messrs. Pentir Williams & Jones, of Bangor).

Norman William White (Mr. John Stuart Budge, of the firm of Messrs. Howes Percival & Budge, of Northampton; and Mr. Stanley Spencer Moore, of London).

Winston Radcliffe Wood (Mr. Thomas Philip Downey, B.Sc., of the firm of Messrs. Eaton Smith & Downey, of Huddersfield).

THIRD CLASS.

(In alphabetical order.)

Edward John Mayer Albert (Mr. Robert Pulsford Hart; and Mr. Henry Robert Hart, both of the firm of Messrs. Burton, Yeates & Hart, of London).

Richard Blackburn (Mr. Albert Lees Ashton, of the firm of Messrs. Smith, Fazackerley & Ashton, of Preston).

Geoffrey Bland (Mr. Reginald William Smith, of the firm of Messrs. Belk & Smith, of Middlesbrough).

Neil Buchannan (Mr. George Herbert Buchannan, of the firm of Messrs. Buchannan, Giles & Evans, of Cardiff).

Stanley Harry Edward Burley, LL.B. London (Mr. Charles Baker; and Mr. Cyril Jackson, both of the firm of Messrs. Kenneth Brown, Baker, Baker, of London).

Paul Theophilus William Butters (Mr. William Hadgkiss, of the firm of Messrs. William Hadgkiss & Co., of Smethwick).

David McKinnan Chalmers, M.A. Cantab. (Mr. Ernest Harold Wainwright, B.A., LL.M., of the firm of Messrs. Wainwright, Pollock & Co., of London).

Francis Robert Earle Clark (Mr. Thomas Arthur Codner, of the firm of Messrs. Hooper & Wollen, of Torquay).

Hugh Curry (Mr. Ernest Anthony Meek, of the firm of Messrs. Lucas, Hutchinson & Meek, of Darlington).

William Leslie Dacey, LL.B. London (Mr. David Kervyn Rees, of Cardiff).

Evelyn George Lawrence Dickinson, B.A. Oxon (Mr. John Douglas Ritchie, M.C., of London).

John Eliott (Mr. John Allen Eliott, of the firm of Messrs. Eliott & Eliott, of Plymouth).

Maurice Wylmer Field (Colonel Bernard Henry Leathes Prior; and Mr. Joshua Leslie Field, both of the firm of Messrs. Leslie Field, Prior & Co., of London).

William Arthur Cokayne Frith, B.A. Oxon (Mr. John William Winter, of the firm of Messrs. Maule, Sons & Winter, of Huntingdon).

Ethel Grimshaw, B.A. Liverpool (Mr. Guy Southern; and Mr. Herbert Clegg, both of the firm of Messrs. Southern, Ritchie & Southern, of Liverpool and Burnley).

Frederic George Hails (Mr. Stuart Burton Donald; and Mr. Harold Bevir, M.A., both of the firm of Messrs. Ernest Bevir & Son, of London).

William Liddell Hann (Mr. Stephen Priestman, of the firm of Messrs. T. Priestman, Sons & Slack, of Hull).

William Harding (Mr. Joseph Griffith, M.A., LL.B., of Newcastle-under-Lyme).

Thomas Ouchterlony Turton Hart (Mr. Edwin Hart, of the firm of Messrs. Budd, Brodie & Hart, of London).

James Alexander Hill (Mr. Francis Woolnough Wythe Gross, of the firm of Messrs. Gross & Curjel, of Woodbridge; and Messrs. Morley, Shirreff & Co., of London).

John Rayner Hodder (Mr. Harley Rayner Hodder, of London).

Francis William Holt, B.A. Oxon (Mr. James Esten, of the firm of Messrs. Attersoll Smith & Esten, of Reigate).

Lawrence John Hallam Horner, B.A. Oxon (Mr. John Douglas Ritchie, M.C., of London).

Robert Michael Hornsby (Sir Robert Francis Dunnell, Bart., K.C.B., of York; and Mr. Ion Buchanan Pritchard, M.A., of London).

George Cecil Jones (Mr. William Hamnett, of the firm of Messrs. Bell, Hough & Hamnett, of Stockport.

John Liptrott (Mr. George Francis Hallam, of the firm of Messrs. E. G. Clarke & Hallam, of Lancaster).

George Leopold Lush (Mr. Reginald Herbert Jerman; and Mr. Arthur Smart, both of Salisbury).

Alan Grant Maby, B.A. Oxon (Mr. Herbert Walter Johnson, of the firm of Messrs. Johnson, Jecks & Colclough, of London).

Dennis Ronald Marsh (Mr. Frederick Leopold Steward, M.A., of the firm of Messrs. Lees & Co., of Dudley).

Richard Dendy Marten (Mr. Henry Cecil Hodges, of the firm of Messrs. Hart, Scales & Hodges, of Dorking; and Messrs. Langhams, of London).

Eric George Metson (Mr. Herbert Linley, of London).

Thomas Burgess Parkinson (Mr. George Sturgess, of the firm of Messrs. Browne, Sturgess & Co., of Warrington).

Peter Pettit (Mr. Vincent John Westlake, of the firm of Messrs. Pettit & Westlake, of London).

John Clifford Phillips (Mr. John Lewis Phillips; and Mr. William Rees Edmunds, both of Llanelly).

James Dalzel Pritchard, B.A. Oxon (Mr. Gerald William Pritchard, of the firm of Messrs. Pritchard & Sons, of London).

Roger Joseph Quinn (Mr. Joseph Montague Haslip, B.A., J.P., of the firm of Messrs. Wilkinson, Bowen, Haslip and Jackson, of London).

Brian Raffety, B.A., LL.B., Cantab (Mr. Thomas Estyn Jones, of the firm of Messrs. Weyman, Weyman & Estyn Jones, of Ludlow).

Charles Basil Reader (Mr. Alfred Hughes Wilkinson, of the firm of Messrs. Iveson, West & Wilkinson, of Hull).

Arthur Vincent Risdon (Mr. Thomas Moore, of the firm of Messrs. Watts, Moore & Bradford, of Yeovil).

Harry Nicholas Roberts, LL.B. Manchester (Mr. George Bamford Roberts, LL.M., of the firm of Messrs. Frank Roberts and Son, of Nelson, Lancashire).

David Leonard Roseman, LL.B. London (Mr. Thomas Robert McCready, of Plymouth).

Charles Edwin Vivian Rowe, LL.B. London (Mr. David Kervyn Rees, of Cardiff).

Alan Gale Salmon (Mr. William Redding Bloomer, of the firm of Messrs. Redding Bloomer & Co., of London).

Donald Steuart Shanks, B.A. Cantab. (Mr. Walter Louis D'Arcy Hart, of the firm of Messrs. Gilbert Samuel & Co., of London).

Harold Horace Smith (Mr. William Heath Abberley, of the firm of Messrs. Alcock & Abberley, of Burslem).

Nigel Warington Smyth, B.A. Cantab. (Mr. Douglas Thornbury Garrett, B.A., of the firm of Messrs. Parker, Garrett and Co., of London).

Stanley Soper (Mr. Herbert Ibberson, of the firm of Messrs. Smith & Ibberson, of Barnsley).

Walter Sykes (Mr. Robert Walford Sumner, of Southport).

Anthony Clifford Taylor (Mr. Henry Gilbert Sandiford, of the firm of Messrs. Calder Woods & Sandiford, of London).

Ewart Angwin Thomas (Mr. Michael John McGahey, of the firm of Messrs. Dunn & Baker, of Exeter).

Edward Hugh Dudley Thompson, B.A. Oxon (Mr. Sebastian Hosgood, of the firm of Messrs. Docker, Hosgood & Co., of Birmingham and London).

Kenneth Marshall Trenholme, LL.B. Leeds (Mr. William Trenholme, of Bradford).

Richard Edward Sydney Willison (Mr. Harry Iliffe Mander, of the firm of Messrs. Mander, Hadley & Co., of Coventry).

Mary Danby Wood (Mr. Robert Wood, of the firm of Messrs Forbes, Nixon & Wood, of Saltburn-by-the-Sea).

Peter Yorke, B.A. Oxon (Mr. Charles Lupton, M.A., of the firm of Messrs. Dibb, Lupton & Co., of Leeds).

The Council of The Law Society have accordingly given a Class Certificate and awarded the following prizes:—

To Mr. Lauder—The Clement's Inn Prize, value about £42.

To Mr. Pryer—The Daniel Reardon Prize, value about £21.

To Mr. Bennett, Mr. Forbes, Mr. Hockenhull, Mr. Lockyer and Mr. Mulley, each—The Clifford's Inn Prize, value £5 5s.

The Council have given Class Certificates to the candidates in the Second and Third Classes.

One hundred and sixty-three candidates gave notice for examination.

Legal Notes and News.

Honours and Appointments.

Mr. R. C. DALTON, solicitor, of Oakham and Stamford, has been appointed Clerk of the Peace for Rutland, in succession to Mr. B. A. Adam, who has resigned after holding the office for forty-six years.

The King has been pleased, on the recommendation of the Minister of Health, to approve the appointment of Mr. WILLIAM REES THOMAS, M.D., B.S., M.R.C.P., M.R.C.S., D.P.M., as a Medical Senior Commissioner of the Board of Control in succession to Mr. Arthur Rotherham, M.B.

The Minister of Health and the President of the Board of Trade have accepted with regret the resignation of Major The Right Hon. John W. Hills, D.S.O., M.P., as Chairman of the Inter-Departmental Committee appointed to survey the prices of building materials. They have appointed Sir Samuel Roberts, Bart., M.P., to be Chairman of the Committee.

Professional Announcements.

(2s. per line.)

Messrs. Kerly, Sons & Karuth, of 10 and 11, Austin Friars, London, E.C.2, have admitted into partnership Mr. Harold Duncan Butcher and Mr. Frederick Omar Griffiths Lloyd, B.A., Cantab., who have been associated with them for some years. The style of the firm will remain unchanged.

Messrs. Davidson & Morriss, of 40 and 42, Queen Victoria-street, E.C.4, announce that Mr. E. M. Morriss is retiring from practice at the end of this year, and that Mr. Guy R. Morriss is entering into partnership with Messrs. Druces & Attlee, of 10, Billiter-square, E.C.3, on the 1st January, 1932. Their goodwill, business and accounts will be transferred to Messrs. Druces & Attlee, and Mr. Guy R. Morriss will carry on business under that name at 10, Billiter-square, E.C.3.

Wills and Bequests.

Mr. Francis P. Croshaw, barrister-at-law, of Regents Park, N.W., left £43,956, with net personalty £25,064.

Alderman Walter Hyett Madge, solicitor, of Gloucester, of Messrs. Grimes, Madge & Lloyd, left £5,944, with net personalty £2,215.

Mr. Guy Brabazon Pilkington, of Dublin, a partner in Messrs. W. C. Hogan & Sons, solicitors, left personal estate in England and the Irish Free State valued at £25,108.

BOROUGH OF WOLVERHAMPTON.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, Wolverhampton, on Friday, the 15th January, 1932, at 10 o'clock in the forenoon.

TRADE MARKS—ALLEGED BREACH OF UNDERTAKING.

In the Manchester Chancery Court recently, the Vice-Chancellor, Sir Courthope Wilson, K.C., had before him an action brought by Messrs. Ritchie & Eason, Ltd., merchants, 28, Dickinson-street, Manchester, against Messrs. Whitworth and Mitchell, Ltd., 38, Whitworth-street, Manchester. The plaintiffs asked that the defendants be restrained from manufacturing, selling, or advertising piece goods under the description "Somona," thereby committing a breach of a written undertaking dated 14th February, 1931, and from infringing the trade mark "Somnola," in class 24 for cotton piece goods of which the plaintiffs are the registered owners.

Mr. Abbott said the defendants gave to the plaintiffs a written undertaking that in consideration of their consenting to the registration of the defendants' trade mark "Crepe Somona" the use of that mark would be confined to crepe cotton piece goods and the defendants would not at any time use the word "Somona" separately as a trade mark for cotton piece goods. That undertaking had been broken. In a catalogue or booklet which followed the exhibition of British artificial silk at Olympia in February, and in another brochure, a particular dress material was advertised under the word "Somona" alone. Material had been invoiced to a firm under that name.

Mr. Bennett, for the defendants, said the orders for the two advertisements were given before the undertaking was given and by some accidental slip they were not withdrawn. No goods had been sent out without the trade mark "Crepe Somona" clearly stamped, so there could not have been any real deception, but there had been a technical breach of the undertaking. The defendants expressed regret and submitted to judgment in the terms of the writ. An order was made accordingly, the cost of an inquiry as to damages being reserved.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. Next London Stock Exchange Settlement Thursday, 7th January, 1932.

	Middle Price 21 Dec. 1931.	Flat Interest Yield. £ s. d.	Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	82	4 17 2	—
Consols 2½%	53⅛	4 13 6	—
War Loan 5% 1929-47	94½	5 5 10	—
War Loan 4½% 1925-45	91	4 18 11	5 9 0
Funding 4% Loan 1960-90	82½	4 17 0	4 18 0
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	88⅛	4 10 5	4 14 0
Conversion 5% Loan 1944-64	97½	5 2 7	5 3 0
Conversion 4½% Loan 1940-44	92	4 17 10	5 8 0
Conversion 3½% Loan 1961	72	4 17 3	—
Local Loans 3% Stock 1912 or after	60	5 0 0	—
Bank Stock	239	5 0 6	—
India 4½% 1950-55	69	6 10 5	—
India 3½%	48½	7 4 4	—
India 3%	42⅞	7 1 2	—
Sudan 4½% 1939-73	89½	5 0 7	5 2 3
Sudan 4% 1974	80½	4 19 5	5 2 3
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	81	3 14 1	4 7 6
Colonial Securities.			
Canada 3% 1938	86	3 9 9	5 12 3
Cape of Good Hope 4% 1916-36	90⅛	4 8 5	6 4 10
Cape of Good Hope 3½% 1929-49	75½	4 12 9	5 15 0
Ceylon 5% 1960-70	96⅛	5 3 8	5 4 6
Commonwealth of Australia 5% 1945-75	77½	6 9 0	6 12 0
Gold Coast 4½% 1956	89½	5 0 7	5 5 6
Jamaica 4½% 1941-71	91½	4 18 4	5 0 0
Natal 4% 1937	89½	4 9 5	6 15 0
New South Wales 4½% 1935-45	67½	6 13 4	6 19 6
New South Wales 5% 1945-65	71⅛	6 19 9	7 4 4
New Zealand 4½% 1945	83½	5 7 9	6 7 6
New Zealand 5% 1946	89	5 12 4	6 2 6
Nigeria 5% 1950-60	96½	5 3 8	5 5 0
Queensland 5% 1940-60	73	6 17 0	7 3 0
South Africa 5% 1945-75	92	5 8 8	5 10 0
South Australia 5% 1945-75	75⅛	6 12 5	6 15 0
Tasmania 5% 1945-75	77½	6 9 0	6 12 6
Victoria 5% 1945-75	75⅛	6 12 5	6 15 0
West Australia 5% 1945-75	77½	6 9 0	6 13 9
The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.			
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	59⅛	5 0 10	—
Birmingham 5% 1946-56	97½	5 2 7	5 3 3
Cardiff 5% 1945-65	96	5 4 2	5 5 0
Croydon 3% 1940-60	68½	4 7 7	5 2 6
Hastings 5% 1947-67	97	5 3 1	5 3 9
Hull 3½% 1925-55	77	4 10 11	5 4 0
Liverpool 3½% Redeemable by agreement with holders or by purchase	70½	4 19 3	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	49	5 2 0	—
London City 3% Consolidated Stock after 1920 at option of Corporation	59	5 1 8	—
Metropolitan Water Board 3% "A" 1963-2003	58½	5 2 7	—
Do. do. 3% "B" 1934-2003	60	5 0 0	—
Middlesex C.C. 3½% 1927-47	85½	4 1 10	4 16 0
Newcastle 3½% Irredeemable	70xd	5 0 0	—
Nottingham 3% Irredeemable	58½	5 2 7	—
Stockton 5% 1946-66	97¼	5 2 7	5 3 3
Wolverhampton 5% 1946-56	97¼	5 2 7	5 4 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	75	5 6 8	—
Gt. Western Railway 5% Rent Charge	90	5 11 1	—
Gt. Western Rly. 5% Preference	71½	6 19 10	—
L. & N.E. Rly. 4% Debenture	65½xd	6 2 3	—
L. & N.E. Rly. 4% 1st Guaranteed	60¼	6 12 3	—
L. & N.E. Rly. 4% 1st Preference	44⅛	8 19 9	—
L. Mid. & Scot. Rly. 4% Debenture	69½xd	5 15 2	—
L. Mid. & Scot. Rly. 4% Guaranteed	60¼	6 12 3	—
L. Mid. & Scot. Rly. 4% Preference	44⅛	8 19 9	—
Southern Railway 4% Debenture	70½xd	5 13 6	—
Southern Railway 5% Guaranteed	86	5 16 3	—
Southern Railway 5% Preference	65	7 13 10	—

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FOR THE PRESERVATION AND STORAGE OF DEEDS, &c.

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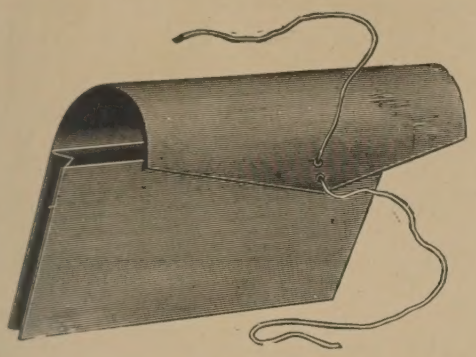

			per 25		per 100	
		THICK MANILLA QUALITY.	s.	d.	s.	d.
No. 25	Draft	11½ × 5 × 1	3	6	13	6
„ 26	Brief	14 × 5½ × 1	4	0	15	0
„ 27	Deed	12 × 9½ × 1	5	6	20	0
		EXTRA THICK LABEL MANILLA (Strengthened with linen corners).				
No. 27a	Brief	14½ × 5½ × 1	7	0	25	0
„ 28	Deed	12 × 9½ × 1	7	6	28	0
„ 28*	Foolscap Flat	14 × 10 × 1	10	0	37	6
		EXTRA THICK LABEL MANILLA, with 2-in. Brown Holland all linen Gusset				
No. 28a	Draft	11½ × 5 × 2	20	0	70	0
„ 29	Brief	14 × 5½ × 2	21	0	75	0
„ 30	Deed	12 × 9½ × 2	24	0	85	0
„ 30a	Foolscap Flat	14 × 10 × 2	27	0	95	0

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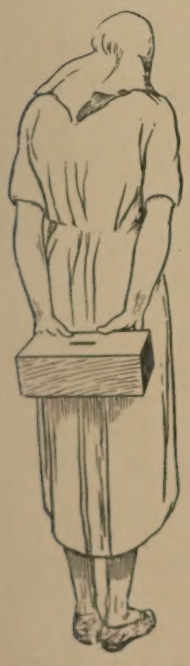

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WILL any person who can give INFORMATION regarding CERTIFICATE No. 4981 for £1,640 THREE Per. Cent. NEW DEBENTURE STOCK in The EAST INDIAN RAILWAY COMPANY in the names of Mrs. Lydia Saunders, Godfrey Wadham St. George Saunders, The Rev. Silvanus Taylor Hingston Saunders, and Edgar Alexander Baylis, which has been lost or mislaid, please COMMUNICATE with Baylis Pearce & Co., 116, Fore-street, E.C.2, Solicitors?

RE LUCY WELCH and HARRY WELCH, decd. —Will any Solicitor or other person having KNOWLEDGE of any WILL made by either of the above-named, late of Isabella Cottage, Lambourne End, Essex, who died on the 12th and 15th days of November, 1931, respectively, please COMMUNICATE with BREEZE, WYLES & RAGGETT, Solicitors, Ongar, Essex.

JOHANN DANIEL FRIEDRICH BRENDEL. Anyone able to supply information regarding the above-named, believed to be an Austrian subject, born on the 15th September, 1856, whose last known address was 11, Baron-street, Pentonville, London, and who was formerly connected with the Victoria Bazaar Company of London and Provinces, is requested to COMMUNICATE with Biddle, Thorne, Welsford & Galt, 22, Aldermanbury, E.C.2.

WILL Solicitor inquiring of a Mr. WILLIAM MARS COMMUNICATE with this office.—Box 897, Solicitors' Journal, 29, Breams-buildings, E.C.4.

LADY BEATRICE MARY LE POLE JAMES, Deceased.—Will any person having knowledge of a Will executed in 1930 or 1931 by the above-named, late of Parkstone or Westmoors, Dorset, communicate with Mr. A. H. Thompson, Solicitor, 114, Old Christchurch-road, Bournemouth.

WILL any Relative of MARY WICKS, late of Stanford-in-the-Vale, Berks, widow, kindly APPLY to Bernard Haines, Solicitor, Faringdon, Berks?

REVD. JOHN MERRIN, decd.—Any person aware of the preparation or existence of a WILL of the Revd. JOHN MERRIN, Rector of Keighley, Yorkshire (who died on the 29th ulto.), is requested to COMMUNICATE with Messrs. Carter & Swallow, Solicitors, 61, Carey-street, Lincoln's Inn, W.C.2

MILES.—Will any Relatives of Rev. JOHN MILES, Vicar Holy Trinity, Paddington, died 1866-1870, COMMUNICATE Dr. Newham, Western House, Winslow, Bucks.

CLARA HEATH.—Will anyone possessing or knowing of any valid WILL of the above deceased, late of Guy's Cross, Warwick, COMMUNICATE with the undersigned at that address or at Nursteed, Devizes.—For next of kin, T. H. Thornely.

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